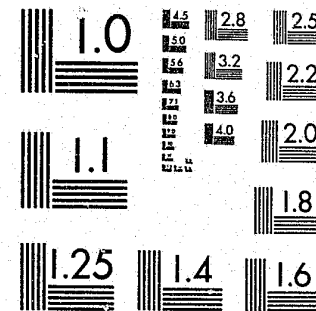


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Criminal Justice Information Policy

Victim/Witness Legislation: An Overview

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**U.S. DEPARTMENT OF JUSTICE
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INTRODUCTION

Background and Purpose

The criminal justice system in the United States traditionally has been offender-oriented, focusing on the apprehension, prosecution, punishment and rehabilitation of wrongdoers. Victims and witnesses have always played a vital role in the system by supplying some of the information necessary for apprehension and prosecution. Yet, until recently, the criminal justice system consistently has failed to accord victims and witnesses the respect equal to the importance of their roles. In fact, a subtle irony has been at work: while scrupulously defending the rights of offenders, the system has ignored the rights of victims and witnesses. While emphasizing the rehabilitation of offenders, the system has done little to help victims recover from the financial and emotional problems they suffer from being victims of crime.

This nearsighted approach to the administration of criminal justice has begun to change in the last decade, particularly in the last few years. During this period, a strong, nationwide victim/witness assistance movement has achieved remarkable success in increasing public awareness of the rights and needs of victims and witnesses and establishing programs to assist them. Through the efforts of community organizations, church groups, bar associations and national lobbying groups, hundreds of local assistance programs have been established throughout the country to respond to the special needs of crime victims and witnesses. At the federal level, the President in 1982 appointed a Task Force on Victims of Crime which published a comprehensive report recommending wide-ranging legal reforms and other initiatives at the federal, state and local levels.

State legislatures have been especially active in responding to victim and witness

needs. Legislatures in thirty-nine states, the District of Columbia and the Virgin Islands have enacted measures to provide compensation to victims of crime to help pay medical bills and other crime-related expenses and losses. Others have enacted specific authority for courts to order criminal offenders to make restitution to their victims. Some states have enacted legislation to assist victims and witnesses in understanding and participating in the criminal justice process. Most states have enacted laws dealing with special classes of victims, including children, the elderly and sexual assault victims, who are especially vulnerable to victimization or disproportionately harmed by it. A few states have enacted comprehensive legislation recognizing a "Bill of Rights" for crime victims and witnesses.

It is clear that the victim/witness movement is well-established and that legislation dealing with the rights and needs of victims and witnesses will remain a high priority with state legislatures and other policymakers. It is felt, therefore, that a compendium of current state legislation dealing with victims and witnesses will be of use to policymakers and others who are reviewing or developing legislation in this area. This document is intended to serve that need.

Scope

This Compendium is primarily concerned with state legislation, though the Federal Victim and Witness Protection Act of 1982 and the U.S. Attorney General's Guidelines for Victim and Witness Assistance issued on July 9, 1983 are included for comparison purposes. The survey methodology used to compile the collection was primarily library research in the statutory codes of the fifty states, the District of Columbia, Puerto Rico and the Virgin Islands (for ease of reference, all 53 juris-

dictions are referred to throughout this volume as "states"). The volume is considered current as of January 1, 1984 and includes laws enacted prior to that date dealing with the principal areas of victim/witness concerns and interest. It is not suggested that every existing item of state legislation that may bear on the problems and concerns of victims and witnesses has been identified. The scope of such a project would be beyond the purpose of this volume. Readers are cautioned, therefore, that further review of a particular state's legislation may be appropriate, depending on the detail of the reader's inquiry. It should also be noted that, while the Compendium presents a variety of approaches taken by legislatures, it does not evaluate any of these approaches in any detail, nor does it suggest models or standards.

Organization

The Compendium consists of three parts. Part I sets out a general summary and analysis of victim/witness legislation throughout the country. The major areas of concern are described and typical state statutes addressing these concerns are discussed. This part also discusses information policy considerations raised by the statutes, particularly the issues of confidentiality of personal data about victims and witnesses and access to such data by various groups.

The statutes comprising the Compendium are organized on a subject-matter classification system. Part II sets out definitions of the fifteen major classification categories utilized throughout the Compendium. Part II also sets out fifteen Summary Tables, each of which represents a major classification category. Each table sets out the legal citations to statutes in all U.S. jurisdictions addressing that particular subject-matter category. For example, Table 1, which depicts the category "Victim Compensation Programs," indicates those jurisdictions which have enacted statutory provisions establishing such programs. The Summary Tables are

useful in that they enable the reader to quickly identify the concentration of states which have legislation in a particular subject-matter area.

Part III contains the full text of statutes which address victim or witness concerns. The statutes are organized alphabetically by state, with a final section setting out selected Federal legislation. Preceding the text of each state's laws is a table which presents a breakdown of the state's statutes by classification category. These Individual State Tables are more detailed than the Summary Tables set out in Part II in that they organize citations into subcategories for most of the major subject-matter categories. Additionally, brief explanations and descriptions have been inserted parenthetically, where helpful, to clarify the classification of particular provisions. These tables are intended to serve as a quick reference to an individual state's legislation. Immediately following each table, the statutory text is presented in the order established by the classification system. Thus, if a particular state has a statute establishing a victim compensation program, the text of that statute is set out first, with any laws dealing with restitution by offenders to victims set out next, and so on through the fifteen subject-matter categories.

As noted, a few states have enacted comprehensive legislation dealing with victims and witnesses. Most states, however, have dealt with some, but not all, of the issues and concerns identified in this Compendium. In virtually all states, even those that have enacted comprehensive legislation, the statutory provisions are actually located in various parts and chapters of the state code, such as the chapters dealing with criminal procedure, evidence, sentencing, parole and so on. Only provisions dealing specifically with victims and witnesses have been excerpted for inclusion in this Compendium. In all cases, however, we have indicated the full citation to the section, chapter, article or title from which the provision was taken to facilitate further research.

PART I SUMMARY AND ANALYSIS

Section 1

OVERVIEW OF STATE LEGISLATION

Legislative initiatives responding to the needs of victims and witnesses may conveniently be grouped into three broad categories. First and most numerous are laws providing some form of financial assistance, including victim compensation, restitution, witness fees and employment protections for witnesses and victims. The second category includes laws that recognize the rights of victims and witnesses and seek to protect them and help them to understand the criminal justice process and their role in it. Victim and witness notification laws, intimidation laws, and laws permitting victims to participate in criminal proceedings against the offender fall into this category. The final category includes laws directed at special classes of particularly vulnerable victims, such as children, the elderly and victims of sexual offenses.

In the following sections, typical statutory provisions are described for each category and representative state provisions are cited. Where reference is made to provisions in the laws of particular states by way of example, these provisions may be identified and located in this Compendium by referring to the Summary Tables in Part II or the Individual State Tables in Part III. Where the citation cannot easily be located in this way or where additional reference information is considered necessary or appropriate, this information is provided in footnotes.

Financial Assistance Programs

Victims of crime often suffer considerable financial harm, including property damage or loss, high medical bills and lost wages. Recognizing these residual financial hardships borne by victims, most state legislatures have passed laws designed to reimburse victims for at least some of

their crime-related economic losses. A substantial majority of the states have created victim compensation programs which allocate state funds to help specific classes of crime victims. Most states have enacted or strengthened restitutionary programs, which require offenders to personally reimburse victims for their losses. Several states have adopted laws that deprive criminals of revenues gained from publicity about their crimes and require these funds to be made available to victims or their families. Still other provisions seek to reduce the costs of court appearances by victims and witnesses.

Victim Compensation Programs

At present, thirty-nine states, the District of Columbia and the Virgin Islands have enacted legislation providing compensation for at least some classes of crime victims. Exhibit 1, pages 6 and 7, provides an overview of these compensation programs. Pursuant to these laws, payments are made from state-administered funds upon application by the victim, a dependent or other eligible claimant. Generally, the offender need not have been apprehended or convicted in order for compensation to be paid. Many of these laws establish new boards or commissions within administrative agencies to determine claims, although in some states claims are decided by the courts or existing workmen's compensation agencies (see Exhibit 1).

All of the programs establish eligibility requirements for claimants. The statutes generally provide that awards may be made to victims who are injured as a direct result of specified crimes. If the victim dies, the programs generally authorize payments to the victim's dependents for burial expenses, loss of support and other crime-

Exhibit 1
Overview of State Victim Compensation Programs

State	Victim Compensation Board Location ¹	Award Limits	Extraordinary Coverage ²	Victim Must		
				Show Financial Need	Report Crime Within ⁵	File Claim Within
Alaska	Dept. of Public Safety	Up to \$40,000			5 days	2 years
California	State Board of Control	\$100-23,000	Property damage ³			1 year
Colorado	Judicial Dist. Bds.	\$25-10,000	Residential property damage from \$25 up to \$250		3 days	1 year
Connecticut	Office of Policy and Management	\$100-10,000			5 days	2 years
Delaware	Violent Crimes Bd.	\$25-10,000				1 year
District of Columbia	The Mayor	\$100-25,000		Yes	7 days	6 months
Florida	Dept. of Labor and Emp. Security, Workmens Comp. Div.	\$10,000		Yes	3 days	1 year
Georgia ⁴	Claims Advisory Board and Gen. Assembly	Up to \$5,000	Property damage		5 days	18 months
Hawaii	Dept. of Social Services & Housing	Up to \$10,000	Pain and suffering			18 months
Illinois	Ct. of Claims	\$200-15,000			3 days	1 year
Indiana	Rehab. Services Board	\$100-10,000			2 days	1 year
Iowa	Dept. of Public Safety	Up to \$2,000	Value of clothing held as evidence up to \$100		1 day	6 months
Kansas	Executive Department	\$100-10,000		Yes	2 days	1 year
Kentucky	Victim Comp. Bd.	\$100-15,000		Yes	2 days	1 year
Louisiana	Dept. of Corrections	\$100-10,000	Property damage limited to loss of abode		2 days	1 year
Maryland	Dept. of Public Safety & Corrections	\$100-Amount Determined Under Workmen's Comp. Schedule		Yes	2 days	6 months
Massachusetts	District Court System	\$100-10,000			2 days	1 year
Michigan	Dept. of Mgmt. & Budget	\$100-15,000		Yes	2 days	1 year

¹ Entries in this column indicate either the state agency in which the victim compensation board or commission is located or the agency actually responsible for administering the program. If the location of a board is not indicated in the statute establishing the program, the board itself is noted.

² Coverage under the programs generally extends only to economic losses resulting from personal injuries sustained by the victim or the victim's death, including medical bills, lost wages, loss of support and burial expenses. Those statutes authorizing compensation for pain and suffering and property damage are noted. See note 10 in text.

³ Cal. Gov. Code §29631 et. seq. provides authority for county and city legislative bodies to establish programs to compensate victims for property damage caused by police in making an arrest or offenders in avoiding arrest.

⁴ Georgia's statute only provides for compensation of "good samaritans"--victims injured while attempting to prevent crimes or apprehend offenders.

⁵ Virtually all states require that the victim report the crime to the police. Hawaii does not specify a time limit. In California and Delaware claimants are required to cooperate with the police investigation.

Exhibit 1 (cont'd)
Overview of State Victim Compensation Programs

State	Victim Compensation Board Location ¹	Award Limits	Extraordinary Coverage ²	Victim Must		
				Show Financial Need	Report Crime Within ⁵	File Claim Within
Minnesota	Dept. of Public Safety	\$100-25,000			5 days	1 year
Missouri	Div. of Workmen's Comp.	\$200-10,000			2 days	1 year
Montana	Div. of Workmen's Comp.	Up to \$25,000			3 days	1 year
Nebraska	Commission on Law Enforcement and Criminal Justice	Up to \$10,000		Yes	3 days	2 years
Nevada	Board of Examiners and Dept. of Admin.	\$100-15,000		Yes	5 days	1 year
New Jersey	Exec. Branch	\$100-25,000			90 days	2 years
New Mexico	Exec. Branch	Up to \$12,500			30 days	1 year
New York	Exec. Dept.	Up to \$20,000 (but unlimtd. medical expenses)	Elderly victim may receive up to \$250 for damage to certain personal property; good samaritan up to \$5,000	Yes	7 days	1 year
North Carolina	Dept. of Crime Control & Pub. Safety	\$100-20,000			3 days	2 years
North Dakota	Workmen's Comp. Bureau	\$100-25,000			3 days	1 year
Ohio	Court of Claims Commissioners	Up to \$25,000			3 days	1 year
Oklahoma	Crime Victims Bd.	Up to \$10,000			3 days	1 year
Oregon	Dept. of Justice/ Wk. Comp. Bd.	\$250-23,000			3 days	6 months
Pennsylvania	Crime Victims Bd.	\$100-25,000			3 days	2 years
Rhode Island	Superior Court System	Up to \$25,000	Pain and suffering		10 days	2 years
South Carolina	Crime Victims Advisory Bd.	\$300-10,000			2 days	2 years
Tennessee	Circuit Ct. System	\$100-10,000	Pain and suffering for victim of sex offense up to \$2,500		2 days	1 year
Texas	Industrial Accident Bd.	Up to \$25,000		Yes	3 days	1 year
Virgin Islands	Dept. of Social Welfare	Up to \$25,000	Pain and suffering up to \$1,000		2 days	2 years
Virginia	Industrial Comm.	\$100-12,500			2 days	2 years
Washington	Dept. of Labor & Industries	\$200-15,000 (but unlimtd. medical expenses)			3 days	1 year
West Virginia	Ct. of Claims Commissioner	Up to \$20,000			3 days	2 years
Wisconsin	Dept. of Justice	Up to \$10,000	Cost of clothing held as evidence up to \$100		5 days	2 years

related expenses. Generally, "good samaritans"--persons injured while trying to prevent a crime or apprehend an offender--may also receive compensation for injuries resulting from such efforts. Georgia's program compensates only good samaritans. Some classes of victims, however, are commonly ineligible for awards. For example, many states invalidate claims by relatives of the offender and accomplices of the offender. A few states also deny awards to victims injured while in the custody of law enforcement officials and to non-residents. Additionally, some state programs compensate only claims arising from specific criminal acts. Hawaii's law, for example, applies only to cases involving enumerated violent offenses. Also, victims of automobile offenses are commonly declared ineligible for awards unless the offender used the vehicle in a deliberate attempt to injure the victim. A recent amendment to the Illinois compensation law does allow a victim to receive compensation for injuries suffered in an automobile collision if the driver is convicted of driving under the influence.¹

The statutes also prescribe limits on the types of injuries or related damages for which compensation may be made. Reimbursement is generally provided for specified crime-related expenses not paid by insurance or other collateral sources. Typically, covered expenses include those arising from the personal injury or death of the victim, though a few states, including California, Georgia, Hawaii and Louisiana, do provide some compensation for damage to or loss of property under some circumstances.

¹P.A. 83-297, 1983 Ill. Legis. Serv. (West) to be codified as Ill. Ann. Stat. ch. 70, par. 72(c). See also, Alaska Stat. §18.67.130(b)(4) (no recovery allowed to victim injured by motor vehicle unless the offender was intoxicated or vehicle was used as a weapon); Wash. Rev. Code Ann. §7.68.020(2)(c) allowing recovery for injury caused by offender convicted of vehicular assault or homicide).

While many states will consider the victim's medical bills, wage losses, and even the loss of future earnings in computing an award, there is disagreement as to whether pain and suffering should be a compensable form of damage. Most states do not provide compensation for mental pain and suffering endured by the victim, although some states, including California, New Mexico, Oregon and Rhode Island, authorize compensation for expenses related to psychological treatment necessitated by the crime. A few jurisdictions, including Hawaii, Tennessee and Rhode Island, do provide compensation for pain and suffering, though such awards may be narrowly limited. Tennessee, for example, allows compensation for pain or suffering only if the crime was one of rape or sexual deviancy and limits such awards to \$2,500.

Most states specify the range of awards (see Exhibit 1). A majority of the states require the applicant to allege a minimum economic injury, usually \$100 or more. Virtually all states place an upper limit on the amount that may be paid to the victim or his dependents, usually in the \$10-15,000 range, although several states have set \$25,000 as the maximum award and Alaska will award up to \$40,000. Some states also require a showing of financial hardship by the applicant.

All of the programs contain procedural requirements designed to promote effective law enforcement and to preclude the filing of stale claims. Under such provisions, compensation claims may be denied if the claimant did not promptly report the offense to the police, file the claim within a specified period of time or cooperate in the police investigation.

Restitution

Restitution is a court-imposed sanction requiring the offender to personally compensate the victim for crime-related losses. In contrast to the approach under the victim compensation statutes, restitution is imposed only after an offender has entered a guilty plea or been convicted.

Usually, restitution is ordered as a condition of parole, probation or a suspended sentence.

Restitution can be a valuable and meaningful remedy in the criminal courts. From the victim's standpoint, restitution orders offer another source of compensation, assuming the offender is solvent. In those states without victim compensation programs, restitution provides victims the only means of compensation short of bringing an expensive civil suit. Even in those jurisdictions with victim compensation statutes, restitution can play an important role in reimbursing victims' losses. Victims who fail to qualify under the compensation program may be able to recover by restitution. Victims may also find restitution to be the only inexpensive means of recovery for property damage, since most compensation statutes do not cover such losses.

There are several methods of restitution. Most of the statutes provide for the payment of money to the victim. Courts can order such payments in either a lump sum or in installments. Georgia's law also states that the court can order the offender to make restitution to the victim by transferring property. A few states, including Alabama, Georgia and Kentucky, have laws allowing the offender to make restitution by working for the victim.

The states differ concerning the amount of monetary restitution which may be required of offenders. While all states generally require their courts to consider the offender's ability to pay restitution, most state courts are given discretion to award restitutionary amounts equal to the victim's economic losses. Under such provisions, restitution may be awarded in any amount that does not exceed the victim's crime-related expenses, lost wages and property damages. Kentucky, however, has placed an upper limit on monetary restitution awards, while Utah allows its courts to award up to double the amount of a victim's pecuniary damages.

In most states, restitution orders are issued at the discretion of the sentencing court. However, in an effort to increase

the availability of restitutionary relief to victims, some states have enacted statutes mandating their courts or parole boards to order restitution to many victims in accordance with the offender's ability to pay. California has added an amendment to its state constitution providing that, absent compelling and extraordinary circumstances, convicted persons must make restitution for the crime-related losses of their victims. Nevada's statute, among the most recently amended, mandates a restitution order as a condition of probation or suspension of sentence unless the court finds restitution impracticable. The Nevada law, like those of a few other jurisdictions, further requires the court to indicate the specific circumstances which make restitution inappropriate, should the court decide not to order restitutionary relief.

Restitution orders, however, can be difficult to enforce. When an offender is paroled or placed on probation with a condition that restitution be made, the parole or probation may be revoked for willful failure to pay. In addition, some states provide for enforcement of restitution orders by contempt proceedings. Delaware's law even provides that the court may suspend an offender's driver's license to secure compliance, and Alabama's statute empowers the court to abrogate a business offender's right to do business in the state for willful failure to make restitution.

Restitution programs also cause administrative difficulties not faced by the compensation programs. Offenders charged with making restitution must be supervised to ensure compliance with court orders. Both Montana and Texas require probation officials to monitor payments made by offenders. Under the Texas program, probationers can be required to serve their terms at local "restitution centers" and to pay any income while at such centers to probation officials who must use these funds, in part, to make restitution to victims. Such supervision, whether by the courts, probation officials or other state officials, results in increased costs. Ac-

cordingly, statutes in a few states, including Maryland, Kentucky and Wisconsin, provide that surcharges may be imposed on offenders to defray these costs.

Escrow of Offender Profits

Persons accused of or convicted of crimes sometimes make substantial profits from publicizing their crimes. For example, offenders who write books or articles describing their criminal acts may profit by selling these works to publishers or film producers. Many states have enacted so-called "Son of Sam" laws to provide crime victims access to such revenues as yet another source of compensation. These statutes generally require that any money offenders earn from the re-enactment of their crimes or from the expression of thoughts, feelings, opinions or emotions regarding their crimes be placed in an interest-bearing escrow account pending outcome of the criminal proceedings. If an offender is not convicted, the escrow funds are returned. If the offender is convicted, the funds are retained in the account for a statutory period during which they are available to satisfy any civil judgment obtained against the offender by a victim. Under several of the statutory schemes, the funds can also be released to pay for the offender's legal expenses. After expiration of the statutory retention period, some states, including Idaho, Minnesota and South Dakota, return any money remaining in the account to the offender. Other states, including Alabama, Connecticut and Louisiana, place the remaining money in other state funds, often the general crime victims compensation fund. Commonly, the statutes obligate persons interested in purchasing the offender's crime story, such as book publishers or movie producers, to make payment to the state rather than to the offender. Some provisions require purchasers to file copies of purchase contracts with the state agency which establishes the escrow accounts. Failure to make payment to the state in such cases may result in criminal or civil liability.

Witness Fees

In most states, the witness fees paid to local witnesses are so low as to be little more than symbolic; often witnesses in criminal trials are paid as little as \$5 to \$10 a day. These modest fees cannot begin to compensate witnesses for the financial burden they bear in criminal cases, particularly if the cases require several appearances. To reduce this burden, a few states have enacted legislation to increase witness fees to a more realistic level. For example, Nevada has recently increased its witness fees to \$25 per day of attendance. In Illinois, witnesses receive \$20 a day, and in New Hampshire witnesses are paid \$30 a day. California has enacted a provision that allows courts to pay witnesses an amount equal to their gross salary (up to \$18 per day) for each day of attendance if their employers have refused to pay their regular wages.

Rights of Victims and Witnesses

In addition to providing financial assistance to victims and witnesses, many states have adopted laws designed to secure a meaningful role for victims and witnesses in the criminal justice system. These measures have many goals, such as keeping victims informed of case developments, increasing their understanding of the criminal justice process and ensuring that they are able to participate in the proceedings. Specific reforms include measures designed to protect victims and witnesses from intimidation, notify victims of designated occurrences in the proceedings, provide for victim participation in some proceedings, encourage employers not to discharge testifying employees, provide ombudsmen or support companions for victims, and guarantee victims the right to a speedy disposition of their cases. Many states have enacted one or more of these reforms and Nebraska, Oklahoma, Rhode Island, Washington and Wisconsin have enacted legislation establishing a "Bill of Rights" for crime victims and witnesses, providing for most of the rights and pro-

tections discussed in the following sections.

Protection from Intimidation

Intimidation is one of the most serious problems faced by crime victims and witnesses. While virtually all states have for some time had statutes proscribing the obstruction of justice, tampering with witnesses or even witness intimidation, many of these laws deal inadequately with the problem of intimidation. Existing legislation at the federal level, for example, was found inadequate in that it failed to clearly protect informants, did not define intimidation and did not proscribe the most common form of intimidation--verbal harassment. A new federal law, the Victim and Witness Protection Act, was passed in 1982 to remedy these inadequacies.

In recognition of similar inadequacies, some states have amended their statutes dealing with the crimes of intimidating and tampering with witnesses. Several of these new laws proscribe acts directed toward a broad class of persons, not merely subpoenaed witnesses. Alabama, Arizona and Colorado punish threats directed at anyone whom the offender "believes" will be called as a witness. California and Delaware define "witness" even more broadly as any person having knowledge relating to any crime, whose declaration has been received into evidence, who has reported any crime, who has been served with a subpoena, or who would reasonably be believed by a reasonable person to fall into any of these categories. Statutes in a few states, including California, Delaware, Louisiana, Pennsylvania and Wisconsin, specifically deal with intimidation directed at victims. Some of these laws proscribe a broad range of intimidating acts, including threats or the use of force directed at victims or witnesses with intent to alter their testimony, discourage the reporting of a crime, or prevent appearance at a proceeding. A recently-enacted provision in Illinois also punishes verbal harassment of witnesses who have testified. The provision defines harassment to include communications de-

signed to produce mental anguish or emotional distress.

Other measures aimed at preventing intimidation of victims and witnesses expressly authorize criminal courts to issue protective orders forbidding defendants or other parties from communicating with or coming near such persons. Two states, California and Delaware, have further authorized their courts to order law enforcement agencies to provide protection for victims and witnesses.

Victim Notification Programs

Many of the problems of victims and witnesses emanate from a lack of understanding or information. Often victims are unaware of the existence of compensation programs or other social programs designed to help them cope with their personal and financial problems. Victims and witnesses often are unfamiliar with the nature of criminal proceedings and are reluctant to inquire about them. This lack of understanding can alienate them and discourage cooperation with law enforcement officials. To remedy these informational shortcomings, the states have enacted a variety of notification statutes. Many states require either police officers, hospital officials or victim compensation officials to inform victims or their dependants of the existence of compensation programs. Provisions in some states grant witnesses a right to be told how to apply for fees. Other laws are designed to make victims feel that they are an important part of the prosecution. For example, statutes in California and New York require that, upon request, victims be given notice of the final disposition at the trial level, while a provision in Maine is designed to inform some victims when the prosecutor has recommended a plea agreement. Still other laws help minimize the victim's frustration and waste of time by providing a right to be notified when a hearing will not go forward as planned. Rhode Island's Victim's Bill of Rights not only requires the Attorney General, upon request, to give certain felony victims all of the types of

notice mentioned thus far, but also mandates that he give many victims notice of the status of the investigation and the time of apprehension of the accused.

Notice statutes in some jurisdictions are intended to ensure that victims are aware of their opportunities to participate in the proceedings against the offender. A statute in Indiana requires prosecuting attorneys to inform felony victims that they may appear and make suggestions about any proposed plea bargain. Other laws require that victims be given notice that they may participate in sentencing or parole hearings. A few states recognize that victims frequently wish to know when an offender is released from custody or discharged from supervision. Minnesota and Rhode Island require that efforts be made to notify victims before serious offenders are released on parole. California law provides for notifying the victim when an offender is released on a work furlough program. Other statutes are aimed at protecting victims from potentially dangerous offenders. For example, California recently enacted a law providing that victims who request notice must be informed when offenders who have harmed them have escaped from custody. In Arizona, victims who file a demand must be notified before their assailants are discharged from mental treatment.

Victim Participation in Criminal Proceedings

Traditional criminal justice theory is based on the principle that crimes are offenses against the people at large. The state brings criminal actions and the prosecutor represents the state, not the victim. A major difficulty with this approach is that victims, who have suffered harm at the hands of the offenders and who have a keen interest in how they are dealt with by the criminal process, generally are not allowed to affect the criminal proceedings other than by testifying. To remedy this problem, several state legislatures have enacted measures to increase victim participation in specified decisions affecting

the disposition of their cases. Many of these laws are designed to inform the sentencing court about the impact of the crime on the victim. In several states, this information is made available to the sentencing court through "victim impact statements" included in the presentence report. These statements contain information regarding the financial and emotional impact of the crime on the victim but may also contain the comments of the victim on a proposed sentence. By reviewing these statements, the court has the opportunity to consider the extent of the victim's injury and can more accurately determine the amount of restitutionary awards. In some states, including Illinois, Maryland and New York, probation or other court officials are required to prepare victim impact information for inclusion in the presentence reports in many cases. In other states, including Minnesota, New Jersey, Tennessee, and Vermont, the victim is allowed to prepare all or part of the statement. In Indiana and Nebraska, if a victim impact statement is not included in the presentence report, the probation official responsible for preparing the report must certify that he has attempted to contact the victim in order to obtain it. Other states, including Arizona, California, New Hampshire and Rhode Island, allow many victims to present an oral statement at the sentencing hearing--a procedure called "allocution." Connecticut, Florida and Maine allow victims to make either oral or written statements to sentencing courts.

Some states permit victims to influence other aspects of criminal proceedings. Massachusetts and Nevada allow the victim to submit a written statement for consideration at the offender's parole hearing. A few states, including Connecticut, New Hampshire and Rhode Island, permit victims to submit oral statements at parole hearings. Statutes in Indiana and Nebraska allow certain victims to comment on proposed plea bargains. South Carolina law requires the victim's recommendations to be considered before an offender is admitted to a pretrial intervention program.

Victims' and Witnesses' Rights to Employment Assistance

Some states have enacted legislation protecting the jobs of victims and witnesses while they are participating in criminal proceedings. Statutes in Rhode Island, Washington and Wisconsin encourage the courts or law enforcement agencies to contact employers to explain the importance of court appearances by their employees. Hawaii's statute makes it a misdemeanor for an employer to discharge an employee for responding to a summons and authorizes a discharged employee to bring a civil action for lost wages and reinstatement. In Illinois, an employer who discharges or penalizes an employee for responding to a subpoena in a criminal case can be punished by contempt, but is not required to pay the employee for time spent in court. Under New York's recently-amended law, employers face misdemeanor charges if they discharge or penalize victims or subpoenaed witnesses who are absent from work while attending criminal proceedings. As in Illinois, the New York law does not require the employer to compensate an employee-witness for time spent attending criminal proceedings.

Return of Seized Property

In cases involving crimes against property, law enforcement officials often find it necessary to retain recovered property as evidence at least until the close of trial, thus delaying return of the property for periods up to several months. To remedy this inequity, some states have enacted laws to expedite the return of recovered property to victims. For example, Illinois, Indiana, Kansas, Nevada, and New Jersey have enacted provisions which allow properly authenticated photographs of non-contraband stolen property to be introduced into evidence in lieu of the property itself. After photographing the property, the law enforcement official holding the property may return it to its rightful owner upon satisfactory proof of ownership. Under New York's recently-amended provi-

sion, property recovered by police may be released to its owner after both the prosecution and defense have had a reasonable opportunity to examine it to determine its true value and to take photographs which are legally sufficient for admission at trial.

Ombudsmen and Support Attendants

While victim notification statutes and laws allowing victims to influence court decisions go far toward making victims meaningful participants in criminal proceedings, some states have passed legislation designed to go a step further by providing victims with personal advice or support. Some states provide funding for victim assistance programs which provide these services. Others authorize the appointment of ombudsmen for victims or allow some victims to be accompanied in closed hearings by persons of their choice. A few states authorize the appointment of victim/witness advocates to provide advice concerning the criminal justice process and to coordinate the operation of existing victim and witness programs. An Oklahoma statute designates the state's district attorneys as the persons responsible for overseeing the implementation of the Oklahoma Victim's Bill of Rights in their judicial districts. Under this law, the district attorneys must make an effort to notify victims of their rights to notice of postponed proceedings, to protection from intimidation, and to information about financial assistance programs. Florida law has established a witness-coordinating office in each county's judicial district, responsible for coordinating court appearances of witnesses subpoenaed in criminal cases, as well as notifying witnesses of postponed court appearances.²

Recently-enacted measures in California and Nevada are designed to give prosecuting witnesses moral support in court proceedings. These laws permit all prosecuting witnesses to be accompanied by persons of their own choosing during closed preliminary examinations. In addi-

²Fla. Stat. Ann. §43.35(1),(2),(3).

tion, both states have laws which allow prosecuting witnesses in sex offense cases to have support attendants present during preliminary hearings or trial testimony. These persons are permitted to be present only to give moral support and may not attempt to influence the witness's testimony.

Rights of Victims and Witnesses to a Speedy Trial

The Sixth Amendment to the U.S. Constitution entitles criminal defendants to a speedy trial. In Nebraska and Wisconsin, victims and witnesses have a similar right to speedy disposition of their cases in order to minimize the length of time they must endure the stress of their responsibilities in the criminal justice process.³ These laws do not set binding time limits, and thus their effect and enforceability is uncertain. Yet they do recognize the emotional toll that extended criminal proceedings can have on participants other than the accused.

Special Victims

Virtually all of the states have enacted specialized legislation to protect or benefit certain classes of persons considered to be particularly vulnerable to crime. These special victims include children, spouses, sexual assault victims, the handicapped, the elderly and even school teachers and the police. Legislation to aid these groups has taken numerous forms, such as creating new crime categories (child abuse or abuse of the elderly), instituting special procedures (protective orders for domestic violence situations) or setting up programs to meet the needs of special victims such as rape victims or child abuse victims. Perhaps the most common laws of this type are those designed to provide special protections to elderly victims, sexual assault victims and victims of domestic violence.

³Neb. Rev. Stat. 81-1848(9); Wis. Stat. Ann. §950.04(9).

The Elderly

The elderly are more vulnerable to and disproportionately damaged by crime. Older persons frequently are less able to escape their assailants, more likely to suffer serious injury, and less able to bear financial losses resulting from victimization. Concerns such as these have led many states to pass laws aimed at protecting the elderly from crime and helping them to cope with the consequences of victimization. Several states have amended their sentencing laws to allow courts to consider the advanced age of the victim in determining an offender's sentence. Illinois, for example, recently added a provision to its sentencing statute providing that if the victim's age is 60 or greater, the court may consider this a reason to impose a more severe sentence. Colorado law imposes high mandatory prison terms on offenders who, during the commission of a violent crime, use a deadly weapon against an elderly person. Nevada's law punishes violent crimes committed on persons over 65 by doubling the mandatory prison term. The District of Columbia's law allows criminal courts to sentence persons committing enumerated crimes against the elderly to up to one and one-half times the normal fine or term of imprisonment. Under California law, except in unusual cases where the interests of justice would best be served by granting probation, courts may not grant probation to offenders who commit violent batteries, robberies or mayhem on elderly persons.

Recognizing that the elderly also suffer injury at the hands of persons charged with their care, some states have passed laws aimed at preventing neglect, abuse and exploitation of the aged. A few of these provisions impose criminal penalties on offenders. Statutes in Alabama, Arkansas, and Nevada make it a crime to wilfully abuse or neglect dependent elderly persons, and a Texas law punishes many acts or omissions that cause elderly persons physical or mental injury.

Often elderly persons who are abused or

neglected are either unable to report these offenses or are too dependent on or afraid of the offenders to be motivated to do so. To address this problem, several states, including Hawaii, Texas and Wyoming, have enacted provisions dealing with the reporting of incidents of abuse or neglect of the elderly or disabled. Some states subject persons who have knowledge of abuse or neglect of the elderly or disabled adults to criminal sanctions, usually fines, should they fail to report such information to the appropriate authorities. Connecticut's provision, for example, requires medical professionals to file reports of suspected abuse to the state commission on aging within five days of detection. The penalty for failure to report is a fine of up to \$500. In Alabama, a medical practitioner's willful failure to make the required report is a misdemeanor punishable by imprisonment or fine.

Some legislative measures provide protective services to ensure the health and safety of elderly victims once incidents of abuse, neglect or exploitation have been discovered. Commonly, these statutes designate an agency that can arrange for or provide food, clothing, shelter, medical care and other social services to ensure the elderly person a safe environment in which to live. For example, under Alabama law, the county departments of pensions and security are authorized to provide protective services to abused or neglected adults.

Sexual Assault Victims

Numerous state legislatures have responded to the unique difficulties faced by sexual assault victims. Reforms in this area include measures to provide increased services to victims of sexual assaults, as well as laws aimed at protecting confidential communications by such victims. Several states, including Arkansas, California, Maryland, and New Mexico, have laws which provide support for sexual assault victims by establishing special services or by funding existing programs. Maryland recently enacted a statute to set

up programs to provide specialized services to victims of sexual assaults, including hotline and counseling services. California has established a grant program to fund existing sexual abuse counseling centers. New Mexico law requires the development of a comprehensive state plan to facilitate the prosecution of sex offenses and to help prevent such crimes.

While eligible sexual assault victims may seek reimbursement under victim compensation or restitution programs for their crime-related expenses, several states have passed laws which pay for additional special medical services provided to these victims. In some states, including Maine, Vermont, and Washington, the costs of medical exams designed to preserve prosecution evidence are paid by the state or local governmental units. Laws in Illinois and Nevada ensure that other medical services are provided to sexual assault victims at no cost. In Illinois, the state will reimburse hospitals for the cost of many emergency services, including ambulance costs, provided to these victims. In Nevada, sexual assault victims and their spouses may receive psychological counseling at county expense.

Several states, including California, Florida, Illinois, Maine, Pennsylvania and Utah, have sought to protect the confidentiality of communications by sexual assault victims to sexual assault counselors. Generally, these statutes provide that sexual assault victims or counselors have a privilege not to disclose communications made in confidence by victims to counselors. The statutes differ in the extent of protection afforded confidential communications. For example, Florida's privilege attaches to all confidential communications made by the victim in the course of receiving advice, counseling or assistance from the counselor. Under California's provision, however, the court may, in some cases, compel disclosure of statements made by the victim to the counselor which concern the facts and circumstances of the crime. In Maine, the court has discretion to order the disclosure of otherwise privi-

leged communications to a sexual assault counselor where it deems the disclosure necessary to the proper administration of justice.

Some state legislatures have given even more specialized attention to the problems of child sexual assault victims. Because testifying in court regarding sex crimes can cause children emotional or physical trauma, several states now allow these victims to present their testimony in a less public atmosphere. An Illinois law allows the judge to exclude the public from the courtroom during the testimony of a young sex offense victim, and an Alaska provision requires the exclusion of the public in such cases, upon request by the prosecution. Arizona and Arkansas give their courts discretion to order the videotaping of the depositions of these victims upon request. The depositions take place in the presence of the judge and the victims are subject to cross examination. Once recorded, the depositions are admissible at trial in lieu of the direct testimony of the victim. California and South Dakota have similar provisions, but their laws make it mandatory for courts, upon request, to order the videotaping of a child victim's testimony at a preliminary hearing. The deposition is admissible at trial if the court finds that further testimony would cause the child emotional trauma.

Domestic Violence

In recent years, many state legislatures have recognized that domestic violence is a pervasive social problem. Assaults, batteries and sexual abuse committed by one family member upon another are common occurrences. Moreover, because the victims of these crimes often are emotionally and financially dependent on their abusers, they are unable to effectively protect themselves and unlikely to report the crimes. Because of the unique context in which domestic abuse occurs, legislative aid for victims has taken diverse forms, including measures authorizing the issuance of protective orders, establishing

funds to provide domestic violence services and requiring better recordkeeping about the incidence of domestic violence.

Many states have passed laws which authorize civil courts to issue protective orders to prevent further incidents of violence in the home. Most of these provisions allow any adult household member to request the protective order and many of the laws allow temporary emergency injunctive relief to be granted immediately, without notice or a hearing, if there is a substantial likelihood of immediate injury from another household member. The relief which can be ordered under these statutes is broad. Iowa's statute is characteristic. It allows the court, upon a finding that a defendant has engaged in domestic violence, to order that the defendant refrain from abusing or annoying the plaintiff, that the defendant grant exclusive possession of the residence to the plaintiff, that the defendant stay away from the plaintiff, and that the defendant pay a sum of money for the plaintiff's support. The statute also allows the court to issue an order determining temporary custody of minor children and establishing visitation rights.

The states differ on the appropriate way to enforce domestic protection orders. Violations may be punished by contempt proceedings, fines, criminal prosecution, or incarceration. Statutes in a few jurisdictions allow peace officers to arrest a person without a warrant if there is probable cause to believe that such person has disobeyed a domestic violence protective order.

Recognizing that victims of domestic abuse often need specialized social services, some states have enacted legislation to help establish comprehensive local programs to meet these needs. Many of these laws provide funding for family violence centers to remedy the causes of domestic violence and to help deter serious injuries to victims. For example, Louisiana's law outlines a comprehensive plan for establishing domestic violence centers to provide victims of family violence and their

children with safe refuge and lodging, emergency psychological support and counseling, and information regarding education, job counseling, training programs, housing, emergency medical care, emergency legal care and other social services. The states fund these programs from varying sources. California, Florida and Nevada use marriage license fees to help support these programs.⁴ In Pennsylvania and Wisconsin the programs are partially funded by surcharges imposed on convicted offenders.⁵

Although it is clear that domestic violence is a grave social problem, its magnitude is still uncertain since most disputes are resolved informally, without arrest or official documentation. Police officers often are reluctant to interfere officially in family disputes and do not make records of these offenses. Some states have attempted to increase social awareness of domestic violence and to create a more accurate picture of the nature of the problem through laws that require law enforcement authorities to maintain accurate and complete records of all incidents of domestic violence encountered or reported to them. For example, under West Virginia's provisions, law enforcement officials must submit a monthly report to the Department of Public Safety containing the age and sex of the parties, the relationship between the parties and the types of weapons involved in domestic violence incidents.

⁴Cal. Welf. and Inst. Code §18305; Fla. Stat. Ann. §741.01(2); Nev. Rev. Stat. §122.060(4).

⁵62 Pa. Cons. Stat. Ann. §1203 (fines imposed on offenders to fund domestic violence programs); Wis. Stat. Ann. §§973.055(1), 973.05(1)(2) (penalty assessments imposed on fines paid by domestic abuse offenders).

Federal Actions

The Federal Victim and Witness Protection Act of 1982

On October 12, 1982, the United States Congress enacted the Federal Victim and Witness Protection Act,⁶ an omnibus measure designed to protect and assist victims and witnesses of federal offenses. The act serves three purposes. First, it strengthens existing legal protections for victims and witnesses of federal crimes. Second, it requires the United States Attorney General to develop additional guidelines and legislative proposals to aid federal victims and witnesses. Finally, it is intended to serve as a model for legislation on the state and local levels.

The substantive provisions of the act address the use of victim impact statements in sentencing hearings, the availability of restitutionary relief to victims and the prevention of victim and witness intimidation. Specifically, the federal law requires that presentence reports prepared for federal judges contain a victim impact statement. This feature, which codifies pre-existing practice in some federal courts, provides judges with information concerning financial, psychological or physical harm suffered by victims. Other important provisions of the act strengthen federal laws punishing victim and witness intimidation. For example, the new law for the first time proscribes verbal harassment of witnesses and penalizes acts of retaliation directed at witnesses because of their participation in criminal proceedings. The act also enhances the utility of restitutionary relief in federal criminal cases. Prior to the passage of the act, federal law allowed judges to order restitution only as a condition of probation. The new law establishes restitution as a sentence independent of probation. Although the act does not require federal judges to

⁶Victim and Witness Protection Act of 1982, §2 et. seq., Pub. L. No. 97-291, 96 Stat. 1248.

order restitution in all cases, it does require courts to justify on the record any failure to order restitution.

Federal Guidelines

On July 9, 1983, the Attorney General complied with the mandate in the Victim and Witness Protection Act by publishing a series of guidelines designed to ensure that victims and witnesses are treated fairly and with understanding by federal officials. The guidelines recommend that federal law enforcement personnel provide victims and witnesses with information concerning available services, including medical and social services, compensation programs and private counseling and support programs. They also are to be advised of available procedures to protect them from intimidation. Victims who provide an address and telephone number are to be given notice of major events in the criminal proceedings, including the arrest of the accused, the times of any court appearances at which the victim may appear, the release or detention of the accused, and the victim's opportunities to address the sentencing court. The guidelines also recommend that federal officials consult victims and witnesses to obtain their views on designated aspects of the prosecution, such as proposed dismissals and plea negotiations. Other provisions encourage officials to advocate fully the rights of victims to restitution, to ensure that victim impact statements are properly prepared, and to avoid disclosing the names and addresses of victims and witnesses.

The President's Task Force on Crime Victims

On April 23, 1982, the President appointed a Special Task Force on Victims of Crime. During 1982, the Task Force held hearings in Washington and in five cities across the country, receiving the testimony of almost 200 witnesses, including federal, state and local officials, professionals engaged in all aspects of victim and witness

assistance, and private organizations and individuals interested in the rights of victims and witnesses. Most importantly, the Task Force received testimony from some sixty victims of crime. In December 1982, the Task Force issued its final report setting out comprehensive and detailed recommendations for action at the federal, state, local and private levels to assist victims of crimes and witnesses.⁷ The recommendations are far-ranging, including proposed actions by state and federal legislatures, criminal justice agencies and groups such as hospitals, schools, bar associations, mental health facilities, the ministry and the private sector. The majority of the recommendations deal specifically with the rights of victims and the establishment and funding of assistance and service programs. However, several innovative recommendations are aimed at reform of aspects of the criminal justice system that victims and victim advocates perceive as unreasonable. For example, the Task Force recommends abolition of the controversial exclusionary rule which now operates to render evidence inadmissible in criminal trials if gathered as a result of improper police conduct. Another recommendation encourages the enactment of legislation to abolish parole and limit judicial discretion in sentencing so that offenders would serve the full sentence imposed for their crimes, reduced only by good-time credits actually earned. The report also questions the soundness of laws prohibiting the admission of juvenile justice records at trials for adult offenses, and recommends the initiation of a study of this and other aspects of the juvenile justice system.

The issuance of the report of the President's Task Force marks a significant step in the victim/witness movement. The recommendations of the Task Force-- the most complete yet issued on the subject-- indicate both the seriousness of the plight of crime victims and witnesses as well as

⁷President's Task Force on Victims of Crime, Final Report (December 1982).

the wide range of available reform measures. Because the report bears the authority and prestige of the President, the recommendations should encourage the en-

actment of appropriate implementing legislation and the establishment of needed victim and witness programs at the federal, state and local levels.

Section 2

INFORMATION POLICY CONSIDERATIONS

Operational Considerations

As evidenced by the above discussion of legislative activity, the victim and witness assistance movement has achieved remarkable momentum in recent years and continues as a high priority with legislators and policymakers. Equally evident is the fact that implementation of the programs defined in recent legislation will impose substantial new responsibilities upon the criminal justice system, particularly in regard to the timely production of data necessary to support program objectives. Many of the new laws require police agencies, prosecutors or probation officials to give notice to victims and witnesses concerning the status of criminal cases and scheduled court appearances. Other laws require that notice be given to victims of particular actions or decisions, such as plea bargains, sentence hearings or parole or probation hearings. Still other laws require law enforcement agencies to maintain records of all domestic incidents, even those resolved without arrest or other formal proceedings. To meet these notice and recordkeeping responsibilities, law enforcement agencies in many jurisdictions are now required to collect more accurate and complete personal information about victims and witnesses than they have in the past and to maintain this data in a more systematic manner.

These agencies also must maintain information about victim compensation programs in order to give required notice of and information about the programs to claimants. Even where the responsibility for the administration of victim compensation programs is vested in other agencies, law enforcement agencies must provide or confirm information concerning the nature and circumstances of offenses and the cooperation of victims to enable the adminis-

tering agencies to make eligibility decisions. Law enforcement agencies in some jurisdictions are required to advise victims of available medical and counselling services and they must acquire and maintain this information. Finally, pursuant to some new laws, courts and parole officials must acquire and use information from victims at sentencing hearings and parole hearings. They also must bear the added administrative burden resulting from the increased use of restitution orders, including following up such orders to ensure that offenders comply with them.

In addition to these added operational information requirements, law enforcement agencies probably will bear a large share of the responsibility for collecting and perhaps collating and analyzing statistical data about crime victims. This data is necessary for such purposes as predicting and assessing the seriousness of crime from the victim's perspective, developing victim profiles for identifying potentially vulnerable victims and developing and implementing new response programs, such as educational programs to enable police officers to diagnose and treat crisis symptoms in victims. Some information of this type for major crimes is now collected annually by the Bureau of Justice Statistics as part of the National Crime Survey.⁸ These annual surveys include interviews with about 135,000 individuals in a probability sample of 60,000 households designed to collect comprehensive nationwide information about the circumstances and consequences of criminal victimization. Information collected includes data about the crime as well as the victim's age, race, sex, marital status, education, employment

⁸Bureau of Justice Statistics, U.S. Dept. of Justice, National Crime Survey (annual surveys).

and relationship to the offender. The survey also collects information about the economic consequences of crime, including data about injuries, cost of medical attention, property damage and loss and time lost from work.

Statutes in a few states require criminal justice agencies to keep statistical information on crime victims. Florida law, for example, requires the state department of law enforcement to collect statistical data on the characteristics of victims of crime similar to that collected on offenders.⁹ Law enforcement agencies in some other jurisdictions now routinely collect some limited statistical information about victims, such as age, sex and race, for preparation of crime incident reports. It seems evident that other agencies will need to collect victim data on a regular basis and that additional data elements will need to be collected, such as previous victimization experience, economic status, the relationship between the victim and the offender, and other data elements now included in the National Crime Survey. In addition, this data will need to be reported to state agencies so that it can be systematically aggregated and analyzed to support operational and statistical objectives.

In the long run, it appears likely that the information needs created by the victim/witness movement will have a significant influence on the development and structure of criminal justice information systems. Certainly, the notice requirements of the new laws will provide added impetus to the implementation of automated systems that track the status of criminal cases through the justice system. They may also result in significantly restructured information systems indexed by victim and witness identity as well as by offender identity, particularly since some

of the new laws require the maintenance of information about victims of offenses for which no offender has been identified or apprehended. Finally, the need for more statistical information about victims may necessitate the redesign of existing criminal justice statistical systems to facilitate the collection of data of the kind discussed above.

Confidentiality Considerations

In addition to added administrative burdens, criminal justice agencies responsible for collecting and maintaining information on victims and witnesses will have to deal with confidentiality questions concerning the disclosure, use and security of this information. The primary issue centers on the authority to disclose victim and witness information. Both public and private organizations providing services to victims and witnesses require access to information about these persons in order to implement their programs. For example, victim compensation programs must have access to police reports to determine eligibility and to verify that victims have cooperated with police investigations. Likewise, private organizations providing medical or counselling services to victims of sexual assault or domestic abuse require victim identification data in order to contact victims who may need their services.

The question of what persons and organizations may have access to victim data has not been addressed by law in most states. Statutes regulating the disclosure of criminal justice information do not generally govern the release of data concerning victims and witnesses. Most criminal record laws do not apply to information about persons, such as victims and witnesses, who have not been arrested or charged with criminal conduct. Rather, these laws apply principally, and in most states exclusively, to criminal history records—that is, alphabetically indexed records that identify offenders and include notations of their progress through the criminal justice sys-

tem from arrest to final release.¹⁰ A few states have laws governing intelligence and investigative records that might apply to victim and witness data,¹¹ but in most states these statutes do not provide clear guidance on the disclosure of victim or witness information.

Law enforcement officials may be authorized to release victim or witness information to public agencies involved with victim assistance, such as victim compensation boards, under laws establishing these programs. Many states have expressly granted their victim compensation agencies access to victim information. Under Louisiana's law, for example, all state agencies are required to cooperate to the greatest practical extent in providing requested information to the victim compensation board.¹² A few state statutes provide the victim compensation agency with express authority to obtain specific law enforcement data. Under Nebraska's law, the Crime Victims Reparations Board is granted access to any relevant criminal history record information or investigative information maintained by the law enforcement agency that handled the offense upon which the victim's application for compensation is based.¹³ Oregon's crime victim compensation statute authorizes the state compensation board to request any necessary information from law enforce-

ment agencies and directs law enforcement officials to provide such information.¹⁴ Even where state law does not provide express authority to disclose victim or witness data to public agencies, law enforcement officials may reasonably conclude that their state legislatures intended these public organizations to have sufficient information on victims and witnesses to implement their programs. For this reason, agency officials may safely assume that authority exists to release needed information on victims and witnesses to public victim compensation programs and victim/witness notification programs.

Once victim information is in the hands of these public agencies, statutes in some states protect its confidentiality by prohibiting its further disclosure. In both Washington and South Carolina, for example, victim information contained in compensation board files is by law confidential, subject to specific exceptions.¹⁵ Likewise, a statute in Kentucky provides that information obtained by the state bureau of social services regarding incidents of abuse of the elderly must be treated as confidential.¹⁶

A more difficult disclosure question arises when the requestor is a private organization performing victim or witness services or assistance without specific statutory authorization. Literally hundreds of such organizations have sprung up around the country in recent years. Some are funded by state grant programs and others are supported by private funds. Typically, these organizations provide specialized services or assistance to particular classes of victims, such as rape or sexual assault victims, elderly victims, abused children, or victims of domestic violence. In some states, these private assistance groups are

⁹Fla. Stat. Ann. §943.405(4) (prevention of crimes against the elderly). See, Florida Department of Law Enforcement, Victim Data Collection System, Final Report (Sept. 1982).

¹⁰See, e.g., Hawaii Rev. Stat. §846-1(3); Ill. Rev. Stat. ch. 38, §206-7; Ind. Code Ann. §5-2-4-2. Under some of these statutes, victims may be given access to data on offenders. E.g., Minn. Stat. Ann. §13.82(6); Nev. Rev. Stat. §179A.120.

¹¹See, e.g., Fla. Stat. Ann. §§943.01, 943.08, 943.011; Iowa Code Ann. §692.4(13); Mont. Rev. Codes Ann. §§44-5-101, 103, 303; Wash. Rev. Code Ann. §43.43.856; Wyo. Stat. §9-1-627(c).

¹²La. Rev. Stat. Ann. art. 46, §1807(E).

¹³Neb. Rev. Stat. Ann. §81-1810(3).

¹⁴Ore. Rev. Stat. §147.205(2).

¹⁵S.C. Code §16-3-1240; Wash. Rev. Code Ann. §7.68.140.

¹⁶Ky. Rev. Stat. §209.140.

put in contact with victims by law enforcement agencies, which are required by law to advise victims of the availability of such services.¹⁷ In California, New Jersey and Oklahoma, statewide toll-free "hotlines" have been established to refer victims to local service programs and other community-based resources.¹⁸ Despite such innovative practical efforts to put victims directly in touch with assistance organizations, often the organizations must actively seek out victims and witnesses. To do this, they apply to criminal justice agencies, principally to police agencies, for victim and witness identifying data to enable them to contact persons who may need their services.

Authority to release some victim data to private agencies may exist under present law in some states. The access rights of these groups to such data are at least equal to those accorded the public generally and, therefore, in some states the issue may be determined under state public record laws, which specify what types of government information must be available for public inspection. Under California law, for example, the names and addresses of most crime victims are specifically de-

¹⁷See, Alaska Stat. §18.65.520(1) (police to inform victim of domestic violence shelter); Okla. Stat. Ann. tit. 19 §215.33 (district attorneys to inform victims of services); Ore. Rev. Stat. §133.055(3) (police to inform domestic violence victim of domestic violence shelter). See also, Ala. Code §30-6-9 (law enforcement officials may refer domestic violence victims to shelters); Okla. Stat. Ann. tit. 22, § 40.1 (law enforcement officials to provide sexual assault victims with telephone number of statewide victim referral service).

¹⁸Cal. Assem. Res. 45, par. 6, Res. Ch. 24 (April 20, 1983); Violent Crime Compensation Board, State of New Jersey, Help for Victims of Crime (claims application); Okla. Stat. Ann. tit. 22, §40.4 (hotline for rape, forcible sodomy and domestic violence victims).

clared to be publicly available information.¹⁹ Minnesota's statute, on the other hand, grants law enforcement officials discretion to withhold the identity of victims and witnesses to a crime if the victim or witness requests that his identity not be revealed, and if it appears that release of such information would threaten the personal safety or property of the victim or witness.²⁰ In other states, the question of whether victim identification data is public record information has been the subject of litigation. In Gallagher v. Marion County Victim Advocate Program, Inc.,²¹ a private victim advocacy program sought to compel the Indianapolis police department to disclose crime scene reports containing the identities of crime victims. The Court of Appeals of Indiana ruled that the reports were not public records and denied the organization access to them. The Missouri Court of Appeals was faced with a similar issue in a 1982 case, Hyde v. City of Columbia.²² In that case, a civil damage suit, an abduction victim who had escaped from her abductor alleged that a police department had negligently disclosed her name and address while her assailant was still at large, and that subsequent publication of this information by a newspaper had enabled her assailant to locate her and terrorize her on several occasions. The court held that, under these circumstances, victim identification data is not covered by Missouri's public record law, even though the law, unlike most state public record statutes, does not expressly exempt police investigatory files from the public disclo-

¹⁹Cal. Gov. Code §6254(f)(2).

²⁰Minn. Stat. Ann. §13.82(10)(d).

²¹401 N.E. 2d 1362 (Ind. Ct. App.) (1980).

²²637 S.W. 2d 251 (Mo. App. 1982). Eut see, Hood v. Naeter Brothers, 562 S.W. 2d 770 (Mo. Ct. App., 1978) (publication of name and address of sole witness while criminal at large does not constitute tort of outrageous conduct).

sure requirement. The court concluded that the legislature could not have intended to make such data publicly available where disclosure would endanger vital personal interests of citizens.

Other state legislatures have enacted measures designed to limit public disclosure of identifying information concerning special classes of victims--usually victims of sexual assault. For example, the public record laws of Florida and Connecticut provide that the names and addresses of victims of sexual assaults need not be made available for public inspection.²³ Florida also has a law specifically prohibiting the publication or broadcasting of the names and addresses of sexual assault victims as well as "causing" or "allowing" such disclosure.²⁴ Other statutory provisions are aimed at preventing the disclosure of information about certain victims during court proceedings. Connecticut law provides that the addresses and telephone numbers of sexual assault victims normally need not be publicly disclosed in court proceedings.²⁵ A recent amendment in California provides that the videotaped testimony of minor sexual assault victims is subject to a protective order to ensure the privacy of these victims.²⁶

Some of these statutes are susceptible to constitutional questions concerning their validity. For example, courts have held statutes prohibiting the publication or broadcast of publicly available information about rape victims to be unconstitutional

²³Conn. Gen. Stat. Ann. §1-19(b)(3)(E); Fla. Stat. Ann. §119.07(h).

²⁴Fla. Stat. Ann. §794.03. See also, S.C. Code Ann. §16-3-730.

²⁵Conn. Gen. Stat. Ann. §54-86d. See also, Cal. Evid. Code §352.1; Conn. Gen. Stat. Ann. §54-86e; S.D. Code §23A-6-22.

²⁶Cal. Penal Code §1346(e),(f),(g) (ch. 942 Cal. Laws of 1983). See also, Ark. Stat. Ann. §43-2037; Mont. Rev. Codes Ann. §46-15-403.

under the First Amendment. In the leading case, Cox Broadcasting Corp. v. Cohn,²⁷ decided by the U.S. Supreme Court, the father of a rape/murder victim brought an invasion of privacy action against a television station based both on common law grounds and on a Georgia statute making it a crime to publish the name of a rape victim. The television station had broadcast the victim's identity after obtaining the information from the indictments at the arraignment of the accused offenders. The Court held that under the First Amendment the state could not civilly or criminally penalize the publication of the name and address of a rape victim when the data had been obtained from publicly available court records.

In the Cox decision, however, the Court expressly left open the question of whether the interest of the state in preserving the victim's privacy could be effectuated by statutes or procedures prohibiting the public documentation or disclosure of private victim information rather than prohibiting its publication after it is already in the public domain.²⁸ Some state statutes designed to prevent such public disclosure have recently been challenged on First Amendment grounds. Two courts have reached differing conclusions concerning the constitutionality of a Michigan statute requiring that, upon application, courts in sexual assault cases shall order that the names and addresses of the victim and the accused be suppressed until such time as the accused has been arraigned, the charge has been dismissed or the case has been otherwise concluded. In WXYZ v. Hand,²⁹ a federal court of appeals construed the statute as an unconstitutional prior restraint on publication because it mandates the issuance of suppression orders upon

²⁷420 U.S. 469 (1975). See, generally, Propriety of Publishing Identity of Sexual Assault Victim, Annot. 86 ALR 3d 80.

²⁸Id. at 496, n. 26.

²⁹658 F.2d 420 (6th Cir. 1981).

application without a judicial determination as to whether the privacy rights of the victim or the accused justify such an order. However, in a second case involving the constitutionality of the statute, In Re Midland Publishing Co., Inc.,³⁰ the Michigan Court of Appeals ruled that it does not constitute an invalid prior restraint on publication because it is designed only to prevent court personnel from publicly disclosing court files in sexual assault cases. And, in a 1982 decision, Globe Newspapers v. Superior Court,³¹ the U.S. Supreme Court struck down a Massachusetts law that required trial judges to exclude the public and press during the courtroom testimony of young sex crime victims. Although the court found the state's interest in protecting young sex victims from the trauma of public testimony to be compelling, it concluded that the First Amendment's guarantee of freedom of the press did not allow the state to make the courtroom closing mandatory.

Cases arising from facts not directly involving victims also may be relevant to the issue of access to such data. On the one hand, courts have upheld state statutes and policies making certain other types of criminal justice data non-public. Statutes and policies designating cumulative criminal histories,³² noncontemporaneous arrest data,³³ and investigative data³⁴ as non-public information have all been found con-

³⁰317 N.W. 284 (Mich. Ct. App., 1982).

³¹457 U.S. 596, 102 S. Ct. 2613 (1982).

³²See, Houston Chronicle Publishing Co. v. City of Houston, 531 S.W. 2d 177 (Tx. Ct. App., 1975).

³³See, Menard v. Mitchell, 430 F.2d 486 (D.C. Cir. 1970).

³⁴See, Houston Chronicle Publishing Co. v. City of Houston, 531 S.W. 2d 177, (Tex. Ct. App. 1975); Congressional News Syndicate v. Department of Justice, 438 F.Supp. 538 (D.D.C. 1977).

stitutionally sound. On the other hand, the Supreme Court in Paul v. Davis³⁵ held that the maintenance and dissemination of information concerning arrests and other public criminal proceedings does not invade a constitutionally-protected zone of privacy. In that case, the Court said that the action of a police department in distributing a flyer of "active shoplifters," which included the plaintiff's name and picture, did not violate any right to privacy protected by the U.S. Constitution despite the fact that the shoplifting charges against him had not been prosecuted. One federal district court has subsequently stated that the Supreme Court ruling "snuffed out" any federal constitutional right of privacy affecting the recordkeeping responsibilities of criminal justice agencies.³⁶

These decisions suggest that there is no constitutional interest that dictates a particular agency policy with respect to disclosure of victim information to private victim assistance groups and other private organizations. In the absence of statutory guidance, agency officials may have to adopt local policies on the public release of victim and witness data and, in formulating such policies, they will need to apply a balancing test similar to that used in the Hyde case, where the court weighed the public need for data about victims of crime against the probability of harm to the victim caused by the release of the data. Assessing the probability of harm to the victim may be difficult because factors such as the nature of the information sought, the nature of the offense, the status of the case, and the specific wishes of the victim may affect this determination. The nature of the offense is particularly relevant. Victims of many offenses such as thefts or assaults would be unlikely to object to being contacted by an assistance organization pursuant to a police disclo-

³⁵Paul v. Davis, 424 U.S. 693 (1976).

³⁶Hammond v. Scott, 423 F.Supp. 618, 619 (N.D. Cal. 1976). See also, Loder v. Municipal Court, 553 P.2d 624 (Cal. 1976).

sure. In contrast, rape victims and victims of other sex offenses might reasonably be offended by any disclosure of identifying data, even to a legitimate assistance organization. If the offender has not been apprehended, release of identification data may encourage the offender to further harm or intimidate the victim. Disclosure in such instances should be carefully regulated. In addition, when a victim or witness reasonably requests that his identity not be publicly disclosed, agency officials should seek to honor such requests.

A policy regulating the release of victim or witness information should also take into account the status of the party requesting access to the information. Private victim assistance groups can marshal compelling arguments in support of access rights to victim data. First, such groups should be able to cite safeguards and assurances to suggest that the likelihood of harmful disclosure outside the organizations is slight. Illinois has foreseen this issue and has, by statute, declared victim information received by child abuse assistance centers to be confidential information in the hands of the centers.³⁷ Furthermore, victim and witness organizations can argue that disclosure to them will serve the interests of the data subjects since the purpose of the organizations is to assist them and to provide services to them. By weighing considerations such as these, law enforcement agencies should be able to develop policies that equitably accommodate both the privacy interests of victims and the access rights of victim assistance groups.

Federal Recommendations Affecting Confidentiality

The Report of the President's Task Force on Victims of Crime contains recommendations affecting the confidentiality of victim/witness data. The Task Force notes that victims and witnesses who participate in criminal proceedings often fear reprisals

³⁷Ill. Stat. Ann. ch. 23, par. 2061.5.

if their addresses are disclosed to the public or to the defense. In response to these concerns, the report recommends that legislation be proposed on the state and federal levels to prevent the disclosure of the addresses of victims and witnesses to the public, including the press. The report also recommends that this information should not be given to the defense unless a court first determines the disclosure to be necessary. The Guidelines for Victim/Witness Assistance issued by the Attorney General implement these recommendations in the Department of Justice. The guidelines explicitly instruct federal law enforcement officials to avoid, to the extent possible, the disclosure of the addresses of all victims and witnesses. The guidelines further recommend that prosecutors should resist attempts by the defense to obtain the addresses of victims and witnesses. Although these guidelines do not have the force of law, as a practical matter they should provide important privacy protections for victims and witnesses.

Three other recommendations made by the Task Force raise confidentiality and privacy considerations of interest to criminal justice policymakers. The report recommends that legislation should be enacted that would make information disclosed by victims to designated victim counselors legally privileged and not subject to discovery by the defense. In its recommendations for legislative action, the Task Force proposes that state record laws be amended, if necessary, to make available to employers the sexual assault, child molestation or pornography arrest records of prospective and present employees whose work will bring them into regular contact with children. The report also recommends that a federal study be commissioned to evaluate the juvenile justice system from the perspective of the victim and urges that reconsideration be given to traditional policies supporting the sealing of juvenile records. In its commentary, the Task Force states that the juvenile records of serious juvenile offenders should be available in adult crimi-

nal proceedings if the offender continues to commit crimes as an adult. This recommendation is consistent with research data now becoming available that indicates that juvenile misbehavior is a reliable predictor of adult criminal conduct.³⁸

³⁸Criminal Careers of Habitual Felons, Petersilia and Greenwood (The Rand Corporation, Santa Monica, Cal. 1982); Report of the Project on Public Danger, Dangerous Offenders and the Criminal Justice System -- Vol. 1: The Final Report, Moore, Estrich and McGillis (1981).

PART II

CLASSIFICATION CATEGORIES AND SUMMARY TABLES

Section 1

CLASSIFICATION CATEGORIES

Following are descriptions of the major subject matter categories into which state laws have been classified for both the Summary Tables in Section 2 of this part and the Individual State Tables in Part III. More detailed discussions of the categories may be found in the summary and analysis set out in Part I.

1. Victim Compensation Program

A statutorily-established program which compensates designated classes of crime victims from state funds for specified crime-related losses resulting from specified crimes.

2. Restitution

A court-imposed sanction requiring offenders to personally compensate their victims for crime-related losses. Restitution may be mandatory or discretionary with the sentencing court. It is usually ordered as a condition of parole, probation or suspended sentence.

3. Escrow and Forfeiture of Offender Profits

Statutory provisions which prohibit offenders from obtaining profits resulting from the publicity related to their crimes and permit victims access to these revenues.

4. Witness Fees

Statutory provisions authorizing the payment of fees by the state to witnesses for attending criminal proceedings.

5. Victim's Bill of Rights

Comprehensive (as opposed to piecemeal) legislation entitling victims to a

broad range of rights, protections and services.

6. Protection From Intimidation

Statutory provisions establishing criminal penalties for persons who intimidate or attempt to intimidate victims, witnesses or informants with intent to prevent their appearance at proceedings, alter their testimony or discourage the reporting of a crime. Laws authorizing courts to enjoin such activities are also included.

7. Victim Notification

Statutory provisions designed to ensure that victims and witnesses are advised of the existence of available services, given formal notice of the scheduling or cancellation of criminal proceedings against the offender, and/or are advised of available opportunities to participate in specified criminal proceedings (see category 8).

8. Victim Participation in Proceedings

Statutory provisions which permit victims to present oral or written statements or otherwise influence specific criminal proceedings or decisions involving the offender, including plea bargains, sentencing hearings and parole hearings.

9. Employment Assistance

Statutory provisions which require or encourage courts, law enforcement officials or publicly funded victim-witness groups to contact employers to explain the importance of court appearances by their employees. Statutes which prohibit employers from penalizing their employees for attending criminal proceedings are also included.

10. Return of Seized Property

Statutory provisions describing the procedures by which the victim of a property offense may regain possession of his property once it has been recovered by law enforcement officials.

11. Victim-Witness Assistance

Statutory provisions designed to provide victims and witnesses with personal advice or support, including measures designating ombudsmen for victims, allowing some victims to be accompanied by persons of their choice in closed proceedings and providing funding for local victim/witness advocacy groups.

12. Elderly Victims

Statutory provisions designating specific criminal penalties for crimes committed against elderly victims or establishing programs to prevent abuse, neglect or exploitation of the elderly, including laws requiring law enforcement officials or medical personnel to report incidents of abuse, neglect or exploitation of elderly persons.

13. Sexual Assault Victims

Statutory provisions which authorize compensation to sexual assault victims for

special medical services, establish special programs dealing with the problem of sexual assault (including counseling and special prosecution programs), or allow child sexual assault victims a less public atmosphere in which to testify.

14. Domestic Violence

Statutory provisions addressing the problem of violence between household members, including measures which establish funds for domestic violence shelters, require police officers to maintain more accurate records of domestic violence, or authorize courts to issue protective orders.

15. Privacy and Security of Victim Information

Statutory provisions which regulate the compilation of and access to some types of victim information, including provisions requiring the maintenance of statistics on victims, provisions giving victim compensation agencies access to data held by law enforcement agencies, provisions addressing the confidentiality of victim data held by victim assistance agencies, and provisions creating a privilege for communications to sexual assault counselors.

Section 2

SUMMARY TABLES

The tables on the following pages, entitled "Summary of State Statutes by Classification Category," contain detailed matrices summarizing state victim/witness statutes by classification category. The table for each classification category sets out the legal citations to statutes in all of the states addressing that particular category. As is the case throughout this Compendium, the term "state" includes the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. The last line of each chart sets out references, where

appropriate, to the Federal Victim and Witness Protection Act and the U.S. Attorney General's Guidelines for Victim and Witness Assistance.

The full text of each statutory provision cited may be found in Part III of this Compendium. The citations are to the official compilations of state laws. Only title and section numbers are set out in these Summary Tables. The full titles of the state compilations to which the citations refer may be found in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

1. Victim Compensation Programs

AL	
AK	18.67.010 et seq.
AZ	
AR	
CA	Gov. §§13959 et seq., 13970 et seq., 29631 et seq.
CO	24-4.1-100.1 et seq.
CT	54-201 et seq.
DE	11-9001 et seq.
DC	3-401 et seq.
FL	960.01 et seq.
GA	28-5-100 et seq.
HI	351-1 et seq.
ID	
IL	70-71 et seq.
IN	16-7-3.6-1 et seq.
IA	912.1 et seq.
KS	74-7301 et seq.
KY	346.010 et seq.

LA	R.S. 46:1801 et seq.
ME	
MD	26A-1 et seq.
MA	258A-1 et seq.
MI	18.351 et seq.
MN	299B.01 et seq.
MS	
MO	595.010 et seq.
MT	53-9-101 et seq.
NB	81-1801 et seq.
NV	217.010 et seq.
NH	
NJ	52:4B-1 et seq.
NM	31-22-1 et seq.
NY	Exec. Law §§620 et seq.
NC	15B-1 et seq.
ND	65-13-01 et seq.
OH	2743.51 et seq.

OK	21-142.1 et seq.
OR	147.005 et seq.
PA	71-180-7 et seq.
PR	
RI	12-25-1 et seq.
SC	16-3-1110 et seq.
SD	
TN	29-13-101 et seq.
TX	Civ. Stat. art. 8309-1, §§1 et seq.
UT	
VT	
VI	34-151 et seq.
VA	19.2-368.1 et seq.
WA	7.68.010 et seq.
WV	14-2A-1 et seq.
WI	940.001 et seq.
WY	
FED	

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

2. Restitution

AL	15-18-65 et seq.
AK	12.55.045 et seq., 12.55.100(2)
AZ	13-603(C), 13-803(A), 13-806, 13-901(A), (H); 31-412(c)
AR	41-1201(1)(d), 2(f), 41-1203(2)(h); 43-2350 et seq., 43-2808.3; 46-117(c)
CA	Const. Art. I, §28(b); Penal §§1202.4, 1203.1, 1203.1d, 1203.04
CO	16-11-204.5; 17-2-201(5)(c)(i), 17-26-128(5)(a), 17-28-101 et seq.
CT	53a-30(a)(4), 18-101h(e)
DE	11-4101 et seq.
DC	16-711
FL	775.089; 921.187(9); 944.514; 945.091; 945.30; 947.181; 948.01(4),(5),(6); 948.03(1)(g)
GA	17-14-1 et seq.; 42-8-35(7); 42-8-44
HI	706-605(e)
ID	18-6106
IL	38-1005-5-3(c)(2),(3),-6; 38-1005-6-3(b)(9), -3.1(b)(9)
IN	35-38-2-2(5), 35-50-5-3
IA	910.1 et seq.
KS	21-4603(2)(c),(d); 21-4610(3)(k),(4)(a); 22-3717(j)
KY	431.200; 533.030(3)

LA	Code Crim. Proc. art. 895.1(A); R.S. 15:571.7(C)(2), 15:574.4(J)
ME	17-A-1204(2-A)(B), 17-A-1321 et seq.
MD	27-637, 27-640 et seq.
MA	276-92
MI	18.362, 769.3
MN	241.26(5)(4); 243.23(3); 299B.13; 611A.04; 631.425(5)
MS	47-7-47(4); 99-20-1 et seq.; 99-37-1 et seq.
MO	559.021(2)(1)
MT	46-18-201(1)(a)(iv), 46-18-241 et seq.
NB	29-2219(2)(j)
NV	176.189; 209.4821 et seq.; 213.126
NH	651:2(VI), 651:25(II)(c), 651:62 et seq.
NJ	2A:8-31.1, -31.2; 2C:43-3; 2C:45-1(b)(8); 2C:46-1 et seq.
NM	31-17-1 et seq., 31-20-6A, 31-21-10(D)(7)
NY	Penal Law §§60.27(1), 65.10(g)
NC	15A-1343(b)(9),(d), 15A-1374(b)(11a); 148-33.2, 148-57.1
ND	12.1-32-02(e),(f), 12.1-32-07(2)(e), 12.1-32-08
OH	2951.02(B)(9),(C)

OK	22-991a(A)(1)(a), 22-991f
OR	137.101, 137.103 et seq.
PA	18-1106
PR	33-3212
RI	12-19-32, 12-19-34
SC	17-22-140, 17-25-120, 17-25-125; 22-3-800; 24-3-40, 24-23-30(e), -40, -110
SD	23-A-28-1 et seq.
TN	39-3-405; 40-20-116, 40-35-304; 41-6-101 et seq.
TX	CCP art. 42.12 §§6(a)(h),(n), 6c, 10A(e)(2), 15(g), 42.13 §§6a(8),(14), 6d
UT	41-25-1 et seq.; 76-3-201(3)(a) et seq.; 77-18-1(5), 77-27-3(3),(4)
VT	28-252(b)(5), 28-253(c)
VI	5-3711(a),(c)
VA	19.2-305 et seq.
WA	9.95.210
WV	62-12-9(3)(1)
WI	973.09(1)(b) et seq.
WY	7-13-307 et seq.
FED	P.L. 97-291 §5(1982); Guidelines, Pt. IV

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

3. Escrow of Offender Profits

AL	41-9-80 et seq.
AK	18.67.165
AZ	13-4201 et seq.
AR	
CA	Civ. §2224.1
CO	
CT	54-218
DE	11-9101 et seq.
DC	
FL	944.512
GA	17-14-30 et seq.
HI	
ID	19-5301
IL	70-401 et seq.
IN	16-7-3.7-1 et seq.
IA	910.15
KS	
KY	346.165

LA	R.S. 46:1831 et seq.
ME	
MD	
MA	258A-8
MI	
MN	299B.17
MS	
MO	
MT	53-9-104(e)
NB	81-1836
NV	217.265
NH	
NJ	52:4B-26 et seq.
NM	31-22-22
NY	Exec. Law §632-a
NC	
ND	
OH	

OK	22-17
OR	
PA	71-180-7.18
PR	
RI	12-25.1-1 et seq.
SC	15-59-40 et seq.
SD	23A-28A-1 et seq.
TN	29-13-201 et seq.
TX	Civ. Stat. art. 8309-1, §§16 et seq.
UT	
VT	
VI	
VA	
WA	7.68.200 et seq.
WV	
WI	
WY	
FED	See, P.L. 97-291, §7

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

4. Witness Fees

AL	12-19-230, 12-19-235
AK	
AZ	13-4077
AR	28-524 et seq.
CA	Penal §1329
CO	13-33-102 et seq.
CT	52-260(a)
DE	10-8903 et seq.; 11-5306
DC	15-714
FL	92.142
GA	24-10-24
HI	835-8
ID	19-3008
IL	53-65
IN	33-1-14-1
IA	622.69
KS	28-125, 28-150
KY	See, 421.030 et seq.

LA	R.S. 15:252 et seq.
ME	16-251
MD	Cts. & Jud. Proc. 9-202
MA	262-29
MI	775.13, 775.15
MN	357.22, 357.24
MS	25-7-47, 25-7-57
MO	491.280
MT	26-2-501; 46-15-104
NB	29-2710; 33-139
NV	50.225
NH	516:16; 592-A:12
NJ	22A:1-4
NM	38-6-4; 10-8-4(A)
NY	Crim. Proc. Law §610.50; CPLR §8001(a)
NC	7A-314 et seq.
ND	31-01-16 et seq.
OH	2335.05 et seq.

OK	22-718; 28-81 et seq.
OR	44.410 et seq.
PA	42-5903(a),(b)
PR	4-App.X-2,-5; 34-752
RI	9-29-7
SC	19-19-20 et seq.
SD	19-5-1
TN	24-4-101 et seq.; 40-17-112; 40-25-106, 40-25-129
TX	Code Crim. Proc. art. 24.16
UT	21-5-4, 21-5-10
VT	32-1551
VI	5-660
VA	14.1-189 et seq.
WA	2.36.150; 2.40.010
WV	59-1-16; 62-5-1
WI	814.67
WY	1-14-102, 1-14-106
FED	

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

5. Victim's Bill of Rights

38

AL	
AK	
AZ	
AR	
CA	See, Cal. Const. Art. 1, §28
CO	
CT	
DE	See, H. Subst. Res. No. 1 (April 7, 1982)
DC	
FL	
GA	
HI	
ID	
IL	
IN	
IA	
KS	
KY	

LA	
ME	
MD	
MA	
MI	
MN	611A.01 et seq.
MS	
MO	
MT	
NB	81-1848
NV	See, 1.78.569 et seq.
NH	
NJ	
NM	
NY	
NC	
ND	
OH	

OK	19-215.33
OR	
PA	
PR	
RI	12-28-1 et seq.
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	
WA	7.69.010 et seq.
WV	
WI	950.01 et seq.
WY	
FED	See, P.L. 97-291, §6(a); Guidelines, Pt. II

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

6. Intimidation

63

AL	13-A-10-123 et seq.
AK	11.56.510 et seq., 11.56.900
AZ	13-2802, 13-2804; 41-196
AR	41-2609, 41-2610, 41-2612
CA	Penal §§136 et seq.; 1387; 13835.5(b)(9)
CO	18-8-604 et seq.
CT	53a-151
DE	11-1263, 11-3531 et seq.
DC	22-722
FL	907.041(4)(b)(2); 918.14
GA	16-10-93
HI	28-101; 710-1071 et seq.
ID	18-2604
IL	38-32-4 et seq.
IN	35-33-8-5(d); 35-44-3-4
IA	720.4
KS	21-3806
KY	524.040, 524.050

LA	R.S. 14:129.1
ME	17-A-454
MD	27-27
MA	26B-13B
MI	
MN	609.498
MS	97-9-55
MO	491.600 et seq.; 575.270
MT	45-7-206
NB	28-919; 81-1848(3)
NV	178.5692; 199.230 et seq.; 33.015
NH	641:5, 651:2(VI)
NJ	2C:28-5; 2C:29-3
NM	30-24-3(c)
NY	Penal Law §§215.10 et seq.; Crim. Proc. Law §530.13
NC	14-226
ND	12.1-09-01
OH	2921.03

OK	19-215.33(2); 21-455
OR	162.285
PA	18:4951 et seq.
PR	
RI	11-32-3 et seq.; 12-28-3(3)
SC	16-9-340
SD	22-11-19
TN	39-5-115
TX	Penal Code art. 36.05, 36.06
UT	76-8-508
VT	13-3015
VI	33-4434, 33-4435a
VA	18.2-460
WA	7.69.030(3); 9A.72.110 et seq.
WV	61-5-27
WI	940.20, 940.41 et seq.; 950.04(3)
WY	6-5-305
FED	P.L. 97-291, §4; Guidelines, Pt. V

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

7. Victim Notification

AL	15-22-36(e)(1) et seq., 15-22-36(f)
AK	18.67.175
AZ	12-253(4); 31-411(F); 36-541.01(B)
AR	43-2819
CA	Gov. §13968; Penal §§1191.1,.2, 3042(a), 3043, 11116.10, 11155, 13835.5(b)(6)
CO	
CT	P.A. No. 83-170, 54-91c(c)
DE	11-6541(b)
DC	
FL	960.23, 960.24(1)
GA	
HI	
ID	
IL	70-75.1
IN	11-13-3-3(c),(d),(e),(g); 35-35-3-2(a)(1),(2); 35-35-3-5
IA	912.3(3)
KS	21-4603(3)
KY	346.040(8)

LA	R.S. 1807(B)(2)
ME	15-812(2), 17-A-1257(3)
MD	
MA	127-133A
MI	
MN	299B.06(1)(c); 609.115(1)(c); 611A.02, 611A.03, 611A.06
MS	
MO	
MT	53-9-104(2)(d)
NB	81-1848(1),(2),(4),(5)
NV	178.5694(2), 178.5696(3), 178.5698(1),(2); 213.010(3), 213.040(2), 213.095, 213.130(3)
NH	651-A:1
NJ	52:4B-22 et seq.
NM	31-21-25(E); 33-2-48
NY	Exec. Law §625-a; Crim. Proc. Law §§330.20(19), 440.50
NC	15B-6(3)
ND	65-13-05(9)
OH	2743.71; 2929.14, 2929.22(G)

OK	19-215.33(1),(3),(4); 21-142.6(7); 57-332.2
OR	147.365; 161.325(2)(b), 161.326(2), 161.400
PA	71-180-7.2(k); 71-180-7.17
PR	
RI	12-28-3(1),(2),(4),(6),(9); 12-28-6; 13-8-9.1
SC	24-21-14(a)
SD	23A-28-6
TN	
TX	
UT	77-27-3(1)
VT	
VI	
VA	19.2-368.17
WA	7.69.030(1),(2),(4)
WV	14-2A-25
WI	950.04(1),(2),(4),(5)
WY	7-13-311
FED	P.L. 97-291, §6; Guidelines, Pt. II(A),(B),(C)

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

8. Victim Participation

AL	15-14-52 et seq., 15-18-67, 15-22-36(e)(2)(i)
AK	
AZ	12-253(4); 13-411(F), 13-702(D)(9), 13-702(F)
AR	43-2819
CA	Penal §§1191.1, 1203(b),(h), 3043
CO	16-11-102(1),(4)
CT	P.A. No. 83-416(b); 54-91a(c), 54-91e(b)
DE	
DC	
FL	921.143
GA	
HI	
ID	
IL	38-1005-3-2(3)
IN	35-35-3-2(3), 35-35-3-5 et seq.; 35-38-1-9
IA	901.3(5)
KS	21-4604(2)
KY	

LA	Code Crim. Proc. Art. 875(B)
ME	17-A-1257(2)
MD	41-124(2),(3)
MA	27-133A
MI	
MN	609.115(b); 611A.03(1)(b)
MS	99-20-9
MO	
MT	46-18-112; 46-18-242
NB	23-1201; 29-120, 29-2261(3)(a),(4)
NV	176.145(3); 213.130
NH	651:4-a, 651-A:11-a
NJ	2C:44-6(b)
NM	31-17-1(D)
NY	Crim. Proc. Law §390.30(3)
NC	
ND	
OH	2929.12(A), 2929.14(A); 2947.051

OK	22-982
OR	137.530; 144.790
PA	
PR	
RI	12-28-3(10),(11), 12-28-4, 12-28-6; 13-8-26
SC	17-22-80
SD	
TN	40-35-207(8)
TX	
UT	
VT	28-204(e)
VI	
VA	19.2-299.1
WA	
WV	
WI	950.04(2m), 950.05(1)(dm); 972.15(2m); 973.01(4), 973.09(1m)(6)
WY	
FED	P.L. 97-291, §§3,6(a)(5); Guidelines, Pt. II(C)

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

9. Employment Assistance

AL	
AK	
AZ	
AR	
CA	Penal §13835.5(b)(1)
CO	
CT	54-85(b)
DE	
DC	
FL	
GA	
HI	621-10.5
ID	
IL	38-155-3
IN	
IA	
KS	
KY	

LA	
ME	
MD	
MA	
MI	
MN	
MS	
MO	
MT	
NB	81-1848(8)
NV	50.070; 178.5694(1)
NH	
NJ	
NM	
NY	Penal Law §215.11
NC	
ND	
OH	

OK	19.215.33(7)
OR	
PA	
PR	
RI	12-28-3(7)
SC	
SD	
TN	
TX	
UT	
VT	
VI	
VA	
WA	7.69.030(7)
WV	
WI	103.87; 950.04(8)
WY	
FED	P.L. 97-291, §6(a)(8); Guidelines, Pt. II(D)(4)(a)

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

10. Return of Seized Property

AL	11-47-116
AK	12.80.05
AZ	13-3941
AR	43-2901 et seq.; Rule Crim. Proc. 15.1 et seq.
CA	Penal §§14.07 et seq.; 13835.5(b)(5)
CO	18-4-405
CT	54-36a et seq.
DE	11-8307
DC	4-157, 4-165, 4-168
FL	812.061
GA	17-5-50
HI	52-13 et seq.
ID	
IL	38-115-9
IN	35-33-5-4 et seq., 35-43-4-4(g),(h)
IA	809.1 et seq.
KS	60-472
KY	

LA	R.S. 15:436.1
ME	25-3501 et seq.
MD	27-551(b),(c)
MA	135-7 et seq.; 266-48 et seq.
MI	28.401 et seq.; 434.181 et seq.
MN	609.523
MS	
MO	
MT	46-5-301 et seq.
NB	81-1848(7)
NV	52.385 et seq.; 178.5696(2)
NH	
NJ	2C:65-1 et seq.
NM	29-1-14
NY	Penal Law §450.10
NC	15-11.1
ND	29-01-20 et seq.
OH	737.29 et seq.

OK	19-215.33(6); 22-1321 et seq.
OR	142.010 et seq.
PA	
PR	
RI	11-41-15; 12-28-3(8)
SC	27-21-10 et seq.
SD	22-30A-21
TN	40-17-118
TX	Code Crim. Proc. art. 47.01 et seq.
UT	77-24-1 et seq.
VT	13-2506
VI	5-3941
VA	19.2-270.1 et seq.
WA	7.69.030(6); 10.79.050
WV	62-1A-7
WI	950.04(7)
WY	7-7-105 et seq.
FED	P.L. 97-291, §6(a)(7); Guidelines, Pt. II(D)(3)

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

11. Victim Witness Assistance

AL	
AK	12.45.048(7)
AZ	
AR	
CA	Penal §§868 et seq., 13835 et seq.
CO	
CT	18-101h et seq.; 54-203(e)
DE	
DC	
FL	43.35
GA	
HI	
ID	
IL	70-501 et seq.
IN	
IA	
KS	
KY	

LA	
ME	30-1130
MD	
MA	
MI	
MN	241.55; 611A.02
MS	
MO	595.050
MT	
NB	81-1843, 81-1845 et seq.
NV	171.204, 178.571
NH	
NJ	52:4B-25
NM	
NY	Exec. Law §623(11),(12),(21)
NC	
ND	
OH	

OK	19-215.33, 19-215.33(3)
OR	136.345
PA	
PR	
RI	12-28-3(9),(13)
SC	
SD	
TN	
TX	
UT	
VJ	
VI	
VA	
WA	70.125.060
WV	
WI	950.04(4)
WY	
FED	P.L. 97-291, §6(a)(5); Guidelines, Pt. I(D)

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

12. Elderly Victims

AL	38-9-1 et seq.
AK	47.24.010 et seq.
AZ	46-451 et seq.
AR	59-1301 et seq.
CA	Penal §1203.09; Welf. & Inst. 9380 et seq., 15600 et seq.
CO	16-11-309(1)(b),(2); 18-4-304, 18-4-401
CT	46a-14 et seq.
DE	
DC	22-3901
FL	827.09 et seq.; 943.405
GA	
HI	349C-1 et seq.; 706-662(5)
ID	39-5301 et seq.
IL	38-1005-5-3.2(b)(3)(ii)
IN	35-42-2-1(C); 35-46-1-12 et seq.
IA	
KS	
KY	209.010 et seq.

LA	
ME	17-A-1151(8); 22-3470 et seq.
MD	
MA	19A-14 et seq.; 265-19; 266-25
MI	
MN	
MS	43-45-1 et seq.
MO	
MT	
NB	
NV	193.167, 200.5091 et seq.
NH	
NJ	2C:43-6(d),(e), -7(a)(6),(d); 2C-44-1(2), -3(e), -6(b)
NM	
NY	Soc. Serv. Law 300 et seq.; 473 et seq.
NC	108A-99 et seq.
ND	
OH	2929.12(B)(2), 2929.21(E), 2929.22(B)(2); 2951.02(D)(4)

OK	
OR	
PA	42-9717
PR	
RI	11-5-10
SC	43-29-10 et seq.
SD	
TN	39-2-104(b)(1)
TX	Penal Code §22.04; Human Res. Code §§48.001 et seq.
UT	55-19-1 et seq.
VT	18-1150 et seq.
VI	
VA	63.1-55.1 et seq.
WA	
WV	
WI	940.19(3)(a)
WY	35-20-101 et seq.
FED	

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

13. Sexual Assault Victims

AL	
AK	12.45.047 et seq.; 18.66.010 et seq.
AZ	12-2312
AR	41-1818 et seq.; 43-2035 et seq.
CA	Gov. §13968.1; H&S §§1491 et seq.; 1598 et seq.; Penal §§868.7, 1346, 13837
CO	
CT	
DE	
DC	
FL	395.0201; 918.16 et seq.; 960.28
GA	
HI	
ID	18-6106
IL	38-115-10 et seq.; 111 1/2-87-1 et seq., 111 1/2-1408.4
IN	16-7-3.6-16
IA	
KS	74-7305(g)
KY	

LA	R.S. 40:2109.1
ME	15-1205; 30-507
MD	88A-130; Health Gen. §15-127
MA	123A-10
MI	
MN	241.51 et seq.
MS	
MO	191.225
MT	46-15-401, 46-15-411
NB	
NV	217.280 et seq.
NH	632-A-8
NJ	
NM	29-11-1 et seq., 30-9-17
NY	Exec. Law §631(7)
NC	143B-480.2
ND	
OH	2907.28 et seq.

OK	21-142.19; 22-40 et seq.
OR	
PA	62-1201 et seq.
PR	
RI	
SC	
SD	23A-12-9; 23A-24-26
TN	
TX	Civ. Stat. art. 4447m; Code Crim. Proc. art. 38.071
UT	76-3-409(2); 76-5-411
VT	32-1407
VI	
VA	18.2-67; 19.2-165.1
WA	7.68.070(13); 7.68.170; 70.125.010 et seq.
WV	
WI	
WY	
FED	Guidelines, Pt. II(D)(7)

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

14. Domestic Violence

AL	30-5-1 et seq., 30-6-1 et seq.
AK	18.65.510 et seq.; 25.35.010 et seq.
AZ	13-3601 et seq., 36-3001 et seq.
AR	
CA	Penal Code §§273.5, 273.6, 1000.6 et seq.; Welf. & Inst. Code §§18290 et seq.
CO	
CT	46b-14, 46b-38
DE	31-3901 et seq.
DC	16-1001 et seq.
FL	409.601 et seq.; 741.01 et seq.
GA	19-13-1 et seq.
HI	586-1 et seq.; 709-906 et seq.
ID	39-5201 et seq.
IL	38-206-5.1; 38-1005-6-3(12), 38-1005-6-3.1(12); 40-2301-1 et seq., 40-2401 et seq.
IN	4-23-17.5-1 et seq.; 34-4-5.1-1 et seq.; 35-42-2-1(D)
IA	236.1 et seq.
KS	60-3101 et seq.
KY	209.010 et seq.

LA	R.S. 46:2121 et seq.
ME	22-8501
MD	27-11F; Cts. & Jud. Proc. 4-501 et seq.
MA	209A-1 et seq.
MI	28.257; 400.1501 et seq.; 600.2950 et seq., 764.15b
MN	241.61 et seq.; 518B.01; 629.341
MS	93-21-1 et seq.
MO	455.010 et seq.
MT	
NB	29-2219(5); 42-901 et seq.
NV	33.020; 217.400 et seq.
NH	173-B:1 et seq.
NJ	2C:25-1 et seq.; 30:14-1 et seq.
NM	
NY	Crim. Proc. Law §§530.11, 530.12
NC	50B-1 et seq.
ND	14-07.1-01 et seq., 14-07.2-01 et seq.
OH	2919.25 et seq.; 2933.16; 2935.03(B); 3113.31 et seq.

OK	22-40 et seq., 22-60 et seq.
OR	107.700 et seq., 133-055 et seq.
PA	35-10181 et seq.; 62-1201 et seq.
PR	
RI	11-5-9, 11-15-1 et seq.
SC	
SD	25-10-1 et seq.
TN	36-1201 et seq.; 39-2-105
TX	Fam. Code §§71.01 et seq.; Human Res. Code §§51.001 et seq.
UT	30-6-1 et seq., 77-36-1 et seq.
VT	3-18; 15-1001 et seq.
VI	
VA	63.1-315 et seq.
WA	10.99.010 et seq.; 70.123.010 et seq.
WV	48-2A-1 et seq., 48-2C-1 et seq.
WI	15:197; 46.95; 971.37, 973.055
WY	35.21-101 et seq.
FED	

Full titles of state code compilations are set out in Part III.

SUMMARY OF STATUTES BY CLASSIFICATION CATEGORY

15. Privacy and Security of Victim Information

AL	
AK	47.24.050, 47.24.075
AZ	36-3007
AR	59-1314(3)(e)
CA	Ev. §§1035 et seq.; Gov. §3968(d),(e),(f); H&S §1493; Welf. & Inst. §15621
CO	
CT	54-203(b); P.A. No. 83-429
DE	11-9015
DC	3-412(c)
FL	90.5035; 409.606; 827.09(10); 943.405(4),(5); 960.06(1)(c), 960.15, 960.28(3)
GA	
HI	349C-8
ID	39-5205
IL	110-8-802.1
IN	16-7-3.6-4(3)
IA	236.9, 236.10; 912.3(4), 912.10
KS	74-7304(f)
KY	209.140; 346.040, 346.160

LA	R.S. 46:1807(C)(5),(E)
ME	16-53-A; 22-3474
MD	26A-4(c), 26A-14
MA	19A-23, 19A-26
MI	18.353(d), 18.363
MN	13.56; 241.62(5); 299B.06(1)(c), 299B.06(2)(f); 595.02(10)
MS	93-21-25, 93-21-109, 93-21-111
MO	455.230
MT	53-9-104(2)(a), 53-9-107
NB	42-912, 42-918; 81-1810(3), 81-1842
NV	200.5095; 217.460
NH	173-B;21
NJ	2A:84A-22.11, 84A-22.12; 2C:25-16
NM	31-22-18
NY	Exec. Law §5623(4), 633
NC	15B-12(d),(g),(i)
ND	65-13-05(5)
OH	2743.53(B); 2921.22(E)(6); 3113.39

OK	21-142.6(5)
OR	147.115, 147.205(2), 147.215(2)
PA	42-5945.1; 71-180-7.2(d), 71-180-7.11
PR	
RI	
SC	16-3-1120(3), 16-3-1240
SD	25-10-20
TN	29-13-117
TX	Human Res. Code §§48.083, 51.006, 51.007
UT	55-19-8; 78-3C-1 et seq., 78-24-8(b)
VT	
VI	34-158(g)
VA	19.2-368.3(2), 19.2-368.14
WA	7.68.140, 7.68.145; 70.125.070
WV	14-2A-16(c), 14-2A-21; 48-2C-7
WI	949.13, 949.16, 949.18(5)
WY	35-20-107
FED	Guidelines, Pt. II(D)(1)

Full titles of state code compilations are set out in Part III.

PART III
TEXT OF STATUTES

INTRODUCTORY NOTE

This part of the Compendium sets out the full text of state statutes dealing with victims and witnesses. The statutes are organized by jurisdiction in alphabetical order. Preceding each jurisdiction's laws is a summary table which presents a detailed breakdown of the laws by classification category (with subcategories in some cases). The categories are defined in Section 1 of Part II. These Individual State Tables are intended to serve as a quick reference to the laws of a particular jurisdiction.

The material presented here is current as of January 1, 1984, and the reader is cautioned that further review of a particular state's statutes may be necessary to include the most recent enactments. An effort has been made to include all state legislation dealing with the principal areas of victim/witness concerns and interests. No representation is made that every existing item of state legislation relating to

victims and witnesses has been identified and included. The researcher is cautioned, therefore, that further review of a particular state's legislation may be appropriate, depending on the detail of the researcher's inquiry.

With few exceptions, the textual materials presented here are photographic copies of pages of official state code books. In virtually every state, provisions dealing with victims and witnesses are scattered among various titles or chapters of the state code, such as those dealing with criminal procedure, sentencing, parole or evidence. In such cases, only those sections or paragraphs dealing specifically with victims or witnesses have been excerpted and included in the Compendium. However, the full citations are given to enable the reader to quickly locate the title or chapter from which the provision was excerpted.

COMPENDIUM OF STATE LEGISLATION
DEALING WITH
VICTIMS OF CRIME
AND
WITNESSES IN CRIMINAL PROCEEDINGS

1984

Section 1
STATE STATUTES

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	15-18-65 et seq.
2.1 Sentencing Option	15-18-70
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	15-18-71, 15-18-72(b)
2.4 Mandatory Sentence	15-18-67
2.5 Administration/Enforcement	15-18-74, 15-18-76 (restitution centers)
3. Escrow and Forfeiture of Offender Profits	41-9-80 et seq.
4. Witness Fees	12-19-230, 12-19-235
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	13A-10-123 et seq.
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	15-22-36(a)(1)(i), (e)(2)(1), (e)(3)
7.8 of Release of Offender	15-22-36(f)
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	15-18-67 (restitution hearing)
8.4 Written Statement at Parole Hearing	15-22-36(e)(2)(i)
8.5 Testimony at Parole Hearing	15-22-36(e)(2)(i)
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	15-14-52 et seq. (victim entitled to attend trial and hearings)
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	11-47-116
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	38-9-7
12.3 Abuse, Neglect, Exploitation - Reporting	38-9-8
12.4 Abuse, Neglect, Exploitation - Protective Services	38-9-1, 38-9-4 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	30-5-1, 30-5-7
14.2 Domestic Violence Shelters	30-6-1 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

ALABAMA

Alabama Code

ARTICLE 4A.

RESTITUTION TO VICTIMS OF CRIMES.

Cross references. — As to fines and restitution, see Rule 10, Alabama Rules of Criminal Procedure, Temporary Rules.

This act is not a procedural change. Cox v. State, 394 So. 2d 103 (Ala. Crim. App. 1981).
This act cannot be given retroactive effect to crimes committed prior to its effective

date. Cox v. State, 394 So. 2d 103 (Ala. Crim. App. 1981).

Collateral references. — Pretrial diversion: statute or court rule authorizing suspension or dismissal of criminal prosecution on defendant's consent to noncriminal alternative. 4 ALR4th 147.

§ 15-18-65. Legislative findings; purpose and construction of article.

The legislature hereby finds, declares and determines that it is essential to be fair and impartial in the administration of justice, that all perpetrators of criminal activity or conduct be required to fully compensate all victims of such conduct or activity for any pecuniary loss, damage or injury as a direct or indirect result thereof. The provisions of this article shall be construed so as to accomplish this purpose and to promote the same which shall be the public policy of this state. (Acts 1980, No. 80-588, p. 928, § 1.)

§ 15-18-66. Definitions.

As used in this article, the following words and terms shall have the meanings respectively ascribed by this section:

(1) **CRIMINAL ACTIVITIES.** Any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.

(2) **PECUNIARY DAMAGES.** All special damages which a person shall recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities; the term shall include, but not be limited to the money or other equivalent of property taken, broken, destroyed, or otherwise used or harmed and losses such as travel, medical, dental or burial expenses and wages including but not limited to wages lost as a result of court appearances.

(3) **RESTITUTION.** Full, partial or nominal payment of pecuniary damages to the victim or to its equivalent in services performed or work or labor done for the benefit of the victim as determined by the court of record.

(4) **VICTIM.** Any person whom the court determines has suffered a direct or indirect pecuniary damage as a result of the defendant's criminal activities. "Victim" shall not include any participant in the defendant's criminal activities. (Acts 1980, No. 80-588, p. 928, § 2.)

ALABAMA

§ 15-18-67. Restitution hearing; order of restitution; persons entitled to be heard.

When a defendant is convicted of a criminal activity or conduct which has resulted in pecuniary damages or loss to a victim, the court shall hold a hearing to determine the amount or type of restitution due the victim or victims of such defendant's criminal acts. Such restitution hearings shall be held as a matter of course and in addition to any other sentence which it may impose, the court shall order that the defendant make restitution or otherwise compensate such victim for any pecuniary damages. The defendant, the victim or victims, or their representatives or the administrator of any victim's estate as well as the district attorney shall have the right to be present and be heard upon the issue of restitution at any such hearings. (Acts 1980, No. 80-588, p. 928, § 3.)

Cited in *Hartung v. Graddick*, 16 B.R. 40 (S.D. Ala. 1981).

§ 15-18-68. Criteria for determining restitution.

In determining the manner, method or amount of restitution to be ordered the court may take into consideration the following:

- (1) The financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant;
- (2) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (3) The anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment;
- (4) Any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts;
- (5) The mental, physical and financial well being of the victim. (Acts 1980, No. 80-588, p. 928, § 4.)

§ 15-18-69. Objections to order; statement of findings.

At such restitution hearings, the defendant, the victim, the district attorney, or other interested party may object to the imposition, amount or distribution of restitution or the manner or method thereof and the court shall allow all such objections to be heard and preserved as a matter of record. The court shall thereafter enter its order upon the record stating its findings and the underlying facts and circumstances thereof. (Acts 1980, No. 80-588, p. 928, § 5.)

§ 15-18-70. Method of payment of restitution; payment as condition of sentence suspension or probation.

When a defendant is sentenced or ordered to make restitution, the court may order payment to be made forthwith to be paid to the circuit clerk as other fines and costs are made. The court may also order restitution to be made within a specified period of time or in specified installments to the circuit clerk as a condition of suspension of execution of sentence or as a condition of probation. (Acts 1980, No. 80-588, p. 928, § 6.)

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§ 15-18-71. Enforceability of order when defendant imprisoned; condition of parole.

When a defendant is sentenced to a term of imprisonment, the order of restitution shall be enforceable during the period of imprisonment when the defendant has income. The board of pardons and paroles will be notified of the amount of restitution by its parole officers and when and if the defendant is paroled, it shall be made a condition of his parole to continue his restitution payments to the victim. If during the period of the defendant's parole, he fails to make restitution as ordered by the original court, it shall be grounds for revocation of parole. (Acts 1980, No. 80-588, p. 928, § 7.)

Collateral references. — 24 C.J.S., Criminal Law, §§ 1571(8), 1618(8).

§ 15-18-72. Effect of default by defendant with suspended sentence, on probation or on parole.

(a) When a defendant whose sentence has been suspended and placed on probation by the court, and ordered to make restitution, defaults in the payment thereof or of any installment, the court on motion of the victim or the district attorney or upon its own motion shall require the defendant to show cause why his default should not be treated as violation of a condition of his probation.

(b) When the defendant is sentenced to the penitentiary by the court, and the court orders restitution, it shall be made a condition of his parole that restitution be made. When the parolee defaults in the payment thereof or any installment, the parole board on motion of the victim or the district attorney or the supervising parole officer, may require the defendant to show cause why his default should not be treated as a violation of a condition of parole, and the board may declare the parolee delinquent and after due process may revoke his parole.

(c) The court shall cause all restitution payments to be transmitted in not less than 15 days of receipt of such payment. (Acts 1980, No. 80-588, p. 928, § 8; Acts 1982, No. 82-556.)

The 1982 amendment, effective May 4, 1982, added subsection (c). Collateral references. — 24 C.J.S., Criminal Law, §§ 1571(8), 1618(8).

§ 15-18-73. Restitution by corporation, partnership, etc.; default as forfeiture of right to do business.

When an order of restitution is imposed upon a defendant which is a corporation, unincorporated association, partnership or other business entity, it shall be the duty of the person or persons authorized to make disbursements from the assets of such defendant to make restitution from those assets and a failure to do so by such person or persons may be held to be in contempt of court unless a showing be made to the contrary as pursuant to the provisions of section 15-18-72.

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Any corporation, unincorporated association, or other business entity which fails to make restitution as ordered by the court shall forfeit its rights to do business within the state of Alabama and its charter or other legal grant of the right to do such business may be dissolved by the court. (Acts 1980, No. 80-588, p. 928, § 9.)

§ 15-18-74. Supervision of parolee's restitution.

Whenever an offender in the custody of the department of corrections is paroled, the board of pardons and paroles will inform him of the court's imposition of restitution payments and the supervising parole officer will see that the schedule of payment of restitution is resumed and continued until paid in full. (Acts 1980, No. 80-588, p. 928, § 10.)

§ 15-18-75. Civil action by victim of crime; credit for restitution paid.

Nothing in this article limits or impairs the right of a person injured by a defendant's criminal activities to sue or recover damages from the defendant in a civil action. Evidence that the defendant has paid or has been ordered to pay restitution pursuant to this article may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.

If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages for a victim, that issue is conclusively determined as to the defendant, if it is involved in a subsequent civil action. (Acts 1980, No. 80-588, p. 928, § 11.)

§ 15-18-76. Restitution centers — Establishment and operation; cooperation of counties and municipalities.

(a) The county commissions of several counties and the governing authorities of municipalities are hereby authorized to cooperate with the state board of pardons and paroles in the establishment of restitution centers. Such centers shall be operated by the state board of pardons and paroles. County or municipal property may be utilized with the approval of the county commission or municipal governing authority for the construction, renovation, and maintenance of facilities owned by the state or a local political subdivision. Such a facility may be furnished or leased to the board of pardons and paroles for a period of time for use as a restitution center.

(b) It is the intent of this section that county and local governments contribute only to the establishment, renovation, furnishing, and maintenance of the physical plant of the restitution center and that the board of pardons and paroles support the operation of and have the responsibility of offenders in such centers. Provided, however, that no provision of this article shall operate so as to deprive the court of its power to revoke probation of residence or the state board of pardons and paroles' power to revoke parolees housed in the center. (Acts 1980, No. 80-588, p. 928, § 12.)

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§ 15-18-77. Same — Services; powers of board of pardons and paroles, counties and municipalities.

The state board of pardons and paroles, the county commissions and the governing authorities of municipalities are hereby authorized to cooperate in the institution and administration of services at restitution centers as authorized in section 15-18-76.

The board of pardons and paroles, the county commissions and the governing authorities of municipalities are authorized jointly:

- (1) To seek funding from federal or other sources to provide the maximum supportive services for offenders and the families of offenders who are participating in the restitution program;
- (2) To develop additional programs whereby the offenders may be afforded the opportunity to contribute to society and the support of their families through restitution programs; and
- (3) To develop pilot programs of counseling, training and job placement whereby restitution may be accomplished; such programs may be residential or nonresidential as appropriate. (Acts 1980, No. 80-588, p. 928, § 13.)

§ 15-18-78. Effect of restitution order; rights of victim, etc., section is cumulative and in para materia with other statutes.

(a) A restitution order in a criminal case shall be a final judgment and have all the force and effect of a final judgment in a civil action under the laws of the state of Alabama. The victim on whose behalf restitution is ordered, the executor or administrator of the victim's estate, or anyone else acting on behalf of the victim, shall be entitled to all the rights and remedies to which a plaintiff would be entitled in a civil action under the laws of this state as well as any other right or remedy pertaining to such restitution order as may be provided by law.

(b) The provisions of this section shall be read and deemed in pari materia with other provisions of law. Provided however, the provisions of this section are cumulative and shall not be construed so as to deprive any victim of any other remedy or relief to which a victim may now or hereafter be entitled pursuant to law. (Acts 1983, No. 83-508.)

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Division 2.

Escrow Accounts for Benefit of Crime Victims.

§ 41-9-80. Entity contracting with convicted felon to pay money to board; felony upon failure to pay; escrow account for crime victim who recovers judgment against felon.

Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, indicted or convicted of a felony in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the board of adjustment any moneys which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. Any person, firm, corporation, partnership, association or other legal entity who fails to pay said moneys to the board of adjustment shall be guilty of a felony punishable by imprisonment for not less than one nor more than 10 years and by a fine equal to the net proceeds earned as a result of the reenactment of the crime. The board of adjustment shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime and provided further that such victim, within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives. (Acts 1979, No. 79-600, p. 1063, § 1.)

§ 41-9-81. List of criminals to probate judge; board to notify victims of escrow money.

The board of adjustment shall maintain a list of criminals for whom money is being held in escrow. Said board of adjustment shall, once a year, send such list to each judge of probate of the state to be kept as a public record, open for inspection by the public.

The board of adjustment shall notify all known victims or their families, as determined by the criminal's record, that such escrow moneys are available to satisfy money judgments pursuant to this division. The cost of publication of the list of criminals and for the notification of victims as required by this section shall be paid out of the escrow account. (Acts 1979, No. 79-600, p. 1063, § 2.)

§ 41-9-82. Escrow money to revert to state after five years.

If, five years after the establishment of the escrow account, neither the victim nor any of his heirs, as described above, have applied for the escrow moneys, such moneys shall revert to the state. (Acts 1979, No. 79-600, p. 1063, § 3.)

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§ 41-9-83. Limitation begins running when escrow account established.

Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five year period provided for in section 41-9-80 shall not begin to run until an escrow account has been established. (Acts 1979, No. 79-600, p. 1063, § 4.)

§ 41-9-84. Action to defeat division purpose null and void.

Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this division shall be null and void as against the public policy of this state. (Acts 1979, No. 79-600, p. 1063, § 5.)

* * *

Division 5.

Witnesses' Fees.

§ 12-19-230. Attendance and mileage, etc., fees generally.

Witnesses in criminal cases are entitled to \$.75 per day and \$.05 for each mile to and from their residence by the route usually traveled and all necessary ferriages and toll. (Code 1852, § 796; Code 1867, § 4347; Code 1876, § 5059; Code 1886, § 4886; Code 1896, § 4583; Code 1907, § 6659; Code 1923, § 3762; Acts 1932, Ex. Sess., No. 105, p. 102; Code 1940, T. 11, § 103.)

Witness giving expert testimony. — See *Ex parte Dement*, 53 Ala. 389 (1875). Ala. 60, 20 So. 642 (1896); *Daly v. Johnson*, 225 Ala. 6, 141 So. 909 (1932); *Daly v. Johnson*, 25 Ala. App. 127, 141 So. 910 (1932).
Cited in *Cuthbert v. Lewis*, 6 Ala. 262 (1844);
Gerald v. Bunkley, 17 Ala. 170 (1850); *Nicolas v. Trickey*, 19 Ala. 92 (1851); *Scruggs v. State*, 111 Ala. 60, 20 So. 642 (1896); *Daly v. Johnson*, 225 Ala. 6, 141 So. 909 (1932); *Daly v. Johnson*, 25 Ala. App. 127, 141 So. 910 (1932).
Collateral references. — 20 C.J.S., Costs, §§ 221-247. 97 C.J.S., Witnesses, §§ 35-48.

§ 12-19-235. Attendance and mileage fees of witnesses in cases removed to federal courts; payment of fees.

In all criminal cases removed from the courts of this state into the United States court, all witnesses who attend said United States court are entitled to \$1.50 per day and \$.05 per mile traveled in attending the United States court, to be paid out of the state treasury. (Code 1907, § 6669; Code 1923, § 3772; Code 1940, T. 11, § 113; Acts 1975, No. 1205, § 16-161.)

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§ 13A-10-123. Intimidating a witness.

(a) A person commits the crime of intimidating a witness if he attempts, by use of a threat directed to a witness or a person he believes will be called as a witness in any official proceedings, to:

- (1) Corruptly influence the testimony of that person;
 - (2) Induce that person to avoid legal process summoning him to testify; or
 - (3) Induce that person to absent himself from an official proceeding to which he has been legally summoned.
- (b) "Threat," as used in this section, means any threat proscribed by section 13A-6-25 on criminal coercion.

(c) Intimidating a witness is a Class C felony. (Acts 1977, No. 607, p. 812, § 5015.)

§ 13A-10-124. Tampering with a witness.

(a) A person commits the crime of tampering with a witness if he attempts to induce a witness or a person he believes will be called as a witness in any official proceeding to:

- (1) Testify falsely or unlawfully withhold testimony; or
- (2) Absent himself from any official proceeding to which he has been legally summoned.

(b) Tampering with a witness is a Class B misdemeanor. (Acts 1977, No. 607, p. 812, § 5020.)

PARDONS, PAROLES AND PROBATION

§ 15-22-36. Authority to grant pardons and paroles, remit fines and forfeitures, etc., notice of board action.

(a) In all cases, except treason and impeachment and cases in which sentence of death is imposed and not commuted, as is provided by law, the board of pardons and paroles shall have the authority and power, after conviction and not otherwise, to grant pardons and paroles and to remit fines and forfeitures.

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(e)(1) The board of pardons and paroles shall have no power or authority to in any way approve or order any parole, pardon, remission of fine or forfeiture, restoration of civil and political rights, furlough, leave or early release of a person who has been convicted of:

a. A Class A felony;

b. Any felony committed prior to the first day of January, 1980, which if committed after the first day of January, 1980, would be designated a Class A felony;

c. Any felony involving violence, death or any physical injury to the person of another;

d. Any felony involving unlawful sexual assault or other unlawful sexual conduct on the person of another;

e. Any felony involving sexual assault, or a lewd or lascivious act upon a child under the age of 16 years or attempt thereof;

f. Sexual abuse or any other criminal conduct committed prior to the first day of January, 1980, which if committed after the first day of January, 1980, would be defined as sexual abuse under the Alabama Criminal Code;

g. Child abuse or any criminal conduct committed prior to the first day of January, 1980, which if committed after the first day of January, 1980, would be defined as child abuse under the Alabama Criminal Code;

h. Sodomy or any criminal conduct committed prior to the 1st day of January, 1980, which if committed after the 1st day of January, 1980, would be defined as sodomy under the Alabama Criminal Code;

i. Any violation of section 13A-6-69, as amended;

until and unless at least 30 days written notice of the board action to be considered has been given by the board to the victim.

(2) Such notice shall be given by U. S. mail, certified mail, return receipt requested, and shall include:

a. The name of the prisoner or defendant involved;

b. The crime for which the prisoner or defendant was convicted;

c. The date of the conviction;

d. The court in which the conviction occurred;

e. The sentence imposed;

f. The actual time the prisoner has been held in confinement without regard to the operation of any incentive good time, or other good time laws;

g. The action to be considered by the board;

h. The date, time, and location of the board meeting at which the action is to be considered; and

i. A statement that all persons required to be notified under the provisions of this section will be allowed, at their option, to either appear before the board or give their views in writing.

(3) Provided however, if the victim is a child such notice shall be given the parents of such victim, or in the event there is no parent, to the guardian of such victim. Provided further, if such victim is deceased such notice shall be given to the surviving members of such victim's immediate family, or in the event there is no immediate family, to a relative of such victim, if any. Provided further, such notice may be waived in writing by any person who is entitled to receive such notice.

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(f) After any board action is taken granting any pardon or parole, the board shall promptly notify all persons who are entitled to notice, pursuant to any provision of this section as to the action taken by the board and the conditions, if any, of any such parole or pardon. (Acts 1939, No. 275, p. 426; Code 1940, T. 42, § 16; Acts 1951, No. 599, p. 1030; Acts 1983, No. 83-750, § 2.)

* * *

TRIAL ARRANGEMENTS

ARTICLE 4.

CRIME VICTIMS' COURT ATTENDANCE.

Effective date. — The act which added this article became effective July 29, 1983.

§ 15-14-50. Short title.

This article shall be known as and may be cited as "The Alabama Crime Victims' Court Attendance Act." (Acts 1983, No. 83-622, § 1.)

§ 15-14-51. Legislative findings; purpose of article.

(a) The legislature hereby finds and determines that it is essential to the fair and impartial administration of justice that a victim of a criminal offense be afforded a reasonable opportunity to attend any trial or hearing or any portion thereof conducted by any court which in any way pertains to such offense.

(b) Further, the legislature hereby finds and determines that it is essential to the fair and impartial administration of justice that a victim of a criminal offense not be excluded from any hearing or trial or any portion thereof conducted by any court which in any way pertains to such offense, merely because the victim has been or may be subpoenaed to testify at such hearing or trial or because of any arbitrary or invidious reason.

(c) The provisions of this article are to be construed so as to accomplish these purposes and to promote the same which are hereby declared to be the public policy of this state. (Acts 1983, No. 83-622, § 2.)

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§ 15-14-52. Definitions.

Unless the context clearly requires otherwise or unless different meanings are expressly specified in subsequent provisions of this article, wherever used in this article, the term:

(1) **PERSON.** A human being, a public or private corporation, an unincorporated association, a partnership, or other entity established by law, and/or a government or a governmental instrumentality, including, but not limited to, the state of Alabama or any political subdivision thereof.

(2) **CRIMINAL OFFENSE.** Conduct which is alleged in any summons, complaint, warrant of arrest, information, presentment, or indictment and for which a sentence to a term of imprisonment, or the death penalty, or to a fine is provided by any law of this state or by any law, local law, or ordinance of a political subdivision of this state.

(3) **VICTIM.** A person who is a victim of the defendant's criminal offense. (Acts 1983, No. 83-622, § 3.)

§ 15-14-53. Right of victim to be present in courtroom.

The victim of a criminal offense shall be entitled to be present in any court exercising any jurisdiction over such offense and therein to be seated at the counsel table of any prosecutor prosecuting such offense or other attorney representing the government or other persons in whose name such prosecution is brought. (Acts 1983, No. 83-622, § 4.)

§ 15-14-54. Victim may not be excluded from courtroom; removal generally.

A victim of a criminal offense shall not be excluded from court or counsel table during the trial or hearing or any portion thereof conducted by any court which in any way pertains to such offense, provided, however, a judge may remove a victim from the trial or hearing or any portion thereof for the same causes and in same manner as the rules of court or law provides for the exclusion or removal of the defendant. (Acts 1983, No. 83-622, § 5.)

§ 15-14-55. Exemption from rule requiring exclusion of witnesses from court.

A victim of a criminal offense shall be exempt from the operation of rule of court, regulation, or statute or other law requiring the separation or exclusion of witnesses from court in criminal trials or hearings. (Acts 1983, No. 83-622, § 6.)

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§ 15-14-56. Designation of representative when victim unable to attend.

(a) Whenever a victim is unable to attend such trial or hearing or any portion thereof by reason of death; disability; hardship; incapacity; physical, mental, or emotional condition; age; or other inability, the victim, the victim's guardian or the victim's family may select a representative who shall be entitled to exercise any right granted to the victim, pursuant to the provisions of this article.

(b) Provided, however, in the event of a dispute, the court in its discretion may designate such representative. (Acts 1983, No. 83-622, § 7.)

§ 15-14-57. Effect of nonattendance of representative.

The failure of a victim or a person designated to represent the victim to exercise any right granted by the provisions of this article shall not be cause or ground for an appeal of a conviction by a defendant or for any court to set aside, reverse or remand a criminal conviction. (Acts 1983, No. 83-622, § 8.)

§ 11-47-116. Taking up and storing of abandoned and stolen personal property; redemption by owner; sale and disposition of proceeds.

(a) All municipalities are hereby authorized to provide by ordinance for the taking up and storing of abandoned and stolen personal property found within the corporate limits or outside the corporate limits but within the police jurisdictions and to sell the same in the manner provided in subsection (b) of this section. A permanent record giving the date of the taking of each piece of such property, the place where found and taken and a description of the property shall be kept. The property so taken shall be stored in a suitable place to protect it from deterioration; provided, that if the property be perishable the same may be sold at once without notice, in which case the proceeds shall be held for a period of six months for the account of the owner and if not called for within that time shall be converted into the general fund.

(b) At least every six months the chief officer of the law enforcement department of each such city and town adopting an ordinance under subsection (a) of this section shall sell at public auction to the highest bidder for cash the property which shall have then been taken up and stored for a period of three months or more, the sales to be made after notice of the time and place thereof shall have first been given by publication of notice once a week for two successive weeks in a newspaper of general circulation published in the city or town in question and, in cities and towns in which no newspaper is published, by posting such notice in a conspicuous place at the city hall or police station.

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The first publication or posting of notice, as the case may be, shall be at least 20 days before the sale. The owner of any of the property taken up and stored may redeem the same at any time prior to its sale by paying the reasonable expense of taking the property in charge, its maintenance and storage and a pro rata of the cost of publication. Each article shall be sold separately and a notation in the storage record book shall be made of the amount received for each article. The person making the sale shall have the right to reject any and all bids if the amount bid be unreasonably low and shall have the right to continue the sales from time to time if no bidders are present. After deducting and paying all expenses incurred in the taking up, storing, maintaining and selling of the property, the balance, if any, shall be paid into the general fund of the municipality making the sale. (Acts 1943, No. 533, p. 507.)

PROTECTION OF AGED OR DISABLED ADULTS

Form of Affidavit for Church/School

STATE OF ALABAMA
COUNTY OF

Before me, a notary public in and for said state and county, appeared and is known to me, after being duly sworn or affirmed says as follows: That affiant is the designated representative of church/school and that the below listed parents/guardians have been notified prior to enrollment/reenrollment that church/school has filed notice with and is exempt under law from regulation by the department of pensions and security:

..... Representative

Sworn or affirmed to and subscribed before me this day of, 19.....

..... Notary Public
(Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 3; Acts 1981, No. 81-310, p. 396.)

The 1981 amendment, effective April 22, 1981, added the second, third and fourth sentences in the first paragraph and added the affidavit forms.

§ 38-7-15. Conditions precedent to bringing child into state for purposes of adoption or placement in child-care facility.

Cited in Worley v. Jinks, 361 So. 2d 1082 (Ala. Civ. App. 1978); Hanlon v. Mooney, 407 So. 2d 559 (Ala. 1981).

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CHAPTER 9.

PROTECTION OF AGED OR DISABLED ADULTS.

Sec.	Sec.
38-9-1. Short title.	prohibited; initiation of charges; penalty.
38-9-2. Definitions.	
38-9-3. Legislative findings and intent.	38-9-8. Reports by physicians, etc., of physical abuse, neglect or exploitation — Required; method of reporting; contents.
38-9-4. Arrangements for protective services; liability of department for protective services; services to conform to wishes of person to be served; duty of department to ascertain persons in need of care and protection.	38-9-9. Same — Immunity of reporter from civil and criminal liability.
38-9-5. Emergency protective services.	38-9-10. Same — Penalty for failure to make report.
38-9-6. Protective placement.	38-9-11. Exemption of officers, agents and employees of department from civil liability.
38-9-7. Abuse, neglect and exploitation	

§ 38-9-1. Short title.

This chapter shall be known and may be cited as the Adult Protective Services Act of 1976. (Acts 1977, No. 780, p. 1340, § 1.)

§ 38-9-2. Definitions.

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

(1) **ADULT IN NEED OF PROTECTIVE SERVICES.** A person 18 years of age or older whose behavior indicates that he is mentally incapable of adequately caring for himself and his interests without serious consequences to himself or others, or who, because of physical or mental impairment, is unable to protect himself from abuse, neglect or exploitation by others, and who has no guardian or relative or other appropriate person able, willing and available to assume the kind and degree of protection and supervision required under the circumstances.

(2) **INTERESTED PERSON.** Any adult relative, friend or guardian of a person to be protected under this chapter, or any official or representative of a public or private agency, corporation or association concerned with his welfare.

(3) **CARETAKER.** An individual who has the responsibility for the care of the elderly or handicapped person as a result of family relationship or who has assumed the responsibility for the care of the person voluntarily, by contract or as a result of the ties of friendship.

(4) **OTHER LIKE INCAPACITIES.** Those conditions incurred as the result of accident or mental or physical illness, producing a condition which substantially impairs an individual from adequately providing for his own care or protecting his own interests or protecting himself from physical or mental injury or abuse.

(5) **SENILITY.** Organic brain damage caused by advanced age or other physical illness in connection therewith to the extent that the person so afflicted is substantially impaired in his ability to adequately provide for his own care.

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(6) **ABUSE.** The willful infliction of physical pain, injury or mental anguish or the willful deprivation by a caretaker or other person of services necessary to maintain mental and physical health.

(7) **NEGLECT.** The failure of a caretaker to provide basic needs such as food, shelter and health care for the person unable to care for himself; or the failure of the person to provide these basic needs for himself when the failure is the result of the person's mental or physical inability.

(8) **EXPLOITATION.** An unjust or improper use of another person or another person's resources for one's own profit or advantage or for the profit or advantage of another person.

(9) **PROTECTIVE SERVICES.** Those services whose objective is to protect an incapacitated person from himself and from others.

(10) **DEPARTMENT.** The department of pensions and security of the state of Alabama.

(11) **COURT.** The circuit court. (Acts 1977, No. 780, p. 1340, § 2.)

§ 38-9-3. Legislative findings and intent.

The legislature recognizes that there are many adult citizens of the state who, because of the infirmities of age, disabilities or like incapacities, are in need of protective services. Such services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, neglect, abuse and degrading treatment. This chapter is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect. (Acts 1977, No. 780, p. 1340, § 1.)

§ 38-9-4. Arrangements for protective services; liability of department for protective services; services to conform to wishes of person to be served; duty of department to ascertain persons in need of care and protection.

(a) Protective services may be arranged when an adult person is in need of care and protection because of danger to his health or safety; provided, that nothing in this chapter shall be construed to mean that the department is chargeable for the cost of such care except where such care is specifically provided for by law or departmental regulations and funding exists for such purpose. All protective services shall be in conformity with the wishes of the person to be served unless the person is unable or unwilling to accept such services, and if the person is unable or unwilling to accept such services, the court may order such services. The department may be required to provide or arrange for services only for persons it is equipped to serve and agrees to serve.

(b) The department shall seek out, through investigation, complaints from citizens or otherwise, the adults in the state who are in need of care and protection because of danger to their health or safety, and shall, as far as may be possible, through existing agencies, public or private, or through such other resources as are available, aid such adults to a fair opportunity in life. (Acts 1977, No. 780, p. 1340, § 3.)

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§ 38-9-5. Emergency protective services.

When there is brought to the attention of a county department of pensions and security a person who is unable, because of physical or mental disabilities, to provide for his basic needs for shelter, food, clothing or health care, and whose health or safety is in immediate danger, the department may arrange for protective services with the consent of the person. If the person is incapable of giving consent or does not consent, the department shall petition the court for an order authorizing the department to arrange for care for such person immediately. Upon a determination by the court that such care is urgently and immediately necessary to protect the health or safety of the person, an appropriate order of the court shall be issued authorizing the department to arrange for the placement of such person in an approved foster home, licensed nursing home or other similar facility immediately. At the proceeding to obtain the necessary order, any relative or other interested person may appear to oppose or join in the petition of the department. In the event of such involuntary protective placement the court shall thereafter, within 10 days, cause notice to be given, as appropriate, to the person, his spouse and other interested persons of the action of the court, the present whereabouts of the person and setting a time for a hearing on the matter of the person's need for protective placement, the appropriateness of the present placement and arrangements for future care. (Acts 1977, No. 780, p. 1340, § 9.)

§ 38-9-6. Protective placement.

(a) An interested person may petition the court to order protective placement of an adult for purposes of care. No protective placement may be ordered unless there is a determination by the court that the person is unable to provide for his own protection from abuse, neglect or exploitation. Upon such petition, setting forth the facts and name, age, sex and residence of such person, the court of the circuit in which such person resides has authority, and it is a duty, to appoint a day, not more than 30 days from the filing of such petition, for the hearing thereof. If, on the hearing of such petition, the person is not represented by counsel, the court shall appoint a guardian ad litem to represent him. A jury of six persons shall be impanelled for said hearing to serve as the trier of facts.

(b) Costs of court proceedings under this chapter shall be paid as other civil court costs are paid, as provided for by law.

(c) The court shall give preference in making a determination to the least drastic alternative considered to be proper under the circumstances, including a preference for noninstitutional care wherever possible. Before ordering the protective placement of any person, the court shall direct a comprehensive evaluation of the adult in need of services, if such an evaluation has not already been made and is necessary. The court may utilize available resources in the community in determining the need for placement. The department shall cooperate with the court in securing available resources for the person to be served. A copy of the comprehensive evaluation shall be provided to the guardian or to the guardian ad litem or attorney of the person if a guardian has not been appointed. The court obtaining the evaluation shall request appropriate information which shall include at least the following:

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(1) The address of the place where the person is residing and the person or agency who is providing services at present, if any.

(2) A resume of any professional services provided to the person by the department or other agency in connection with the problems creating a need for placement.

(3) A medical, psychological, social, vocational and educational evaluation and review, where necessary.

(d) The department which arranges for a protective placement shall make an evaluation and submit a written report to the court at least once every six months covering the physical, mental and social condition of each person for whom it is acting and shall recommend an alternative arrangement where appropriate.

(e) Any record of the department or other agency pertaining to such a person shall not be open for public inspection. Information therein shall not be disclosed publicly in such a manner as to identify individuals, but may be made available on application for cause to persons approved by the commissioner of the department or by the court.

(f) Placement may be made in an appropriate alternative living arrangement such as a licensed nursing home, licensed personal care facility or approved foster care home. No person may be committed to a mental health facility under this chapter.

(g) If the person is eligible for the adult services program of the department, usual department policies will be followed in regard to fees or payments, or both. If the person's income or resources, or both, make him ineligible for department services other than protective services, payment for services in relation to his evaluation and to his care in a protective setting is to be made from his income or resources, or both. A guardian may be appointed by the court; provided, that the department shall not be appointed as guardian; and provided further, that the department shall not be appointed custodian other than for the limited purpose, where appropriate, of transporting an adult for protective placement as ordered by the court. If it is agreeable with the person to be served, the court may appoint a guardian having the same powers as a guardian of a person of unsound mind, and it shall not be necessary to have a sanity hearing; otherwise, the court may appoint a guardian in accordance with procedures as provided by law for the appointment of a guardian for a person of unsound mind.

(h) When any adult in need of protective services is unable to manage his estate and thereby is in danger of being reduced to poverty and want, an interested person may petition the court to preserve the estate of such person, to direct use of the estate for the needs of the person and for the general relief of the person.

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(i) No civil rights are relinquished as a result of any protective placement under this chapter. Nothing in this chapter shall be construed to authorize or require medical care or treatment for a person in contravention of his stated or implied objection thereto upon the grounds that such medical care and treatment conflict with his religious beliefs and practices.

(j) As far as is compatible with the mental and physical condition of the adult in need of services or claimed to be in need of services under this chapter, every reasonable effort shall be made to assure that no action is taken without the full and informed consent of the person. (Acts 1977, No. 780, p. 1340, § 4.)

§ 38-9-7. Abuse, neglect and exploitation prohibited; initiation of charges; penalty.

(a) It shall be unlawful for any person to abuse, neglect or exploit any adult protected under the provisions of this chapter. Charges of such abuse, neglect or exploitation may be initiated upon complaints of private individuals or as a result of investigations by social service agencies or on the direct initiative of law enforcement officials.

(b) Any person who abuses, neglects or exploits a person in violation of the provisions of this chapter shall be guilty of a misdemeanor and shall, upon conviction, be punished by imprisonment for not more than six months or a fine of not more than \$500.00 or both. (Acts 1977, No. 780, p. 1340, §§ 5, 11.)

§ 38-9-8. Reports by physicians, etc., of physical abuse, neglect or exploitation — Required; method of reporting; contents.

(a) All physicians and other practitioners of the healing arts having reasonable cause to believe that any adult protected under the provisions of this chapter has been subjected to physical abuse, neglect or exploitation shall report or cause a report to be made as follows:

(1) An oral report, by telephone or otherwise, shall be made immediately, followed by a written report, to the county department of pensions and security or to the chief of police of the city or city and county, or to the sheriff of the county if the observation is made in an unincorporated territory.

(2) Within three days following such oral report, an investigation shall be made by the county department of pensions and security or the law enforcement official, whichever receives the report, and a written report prepared which will include the following:

- a. Name, age and address of such person.
- b. Nature and extent of injury suffered by such person.
- c. Any other facts or circumstances known to the reporter which may aid in the determination of appropriate action.

(b) All such reports prepared by a law enforcement official shall be forwarded to the county department of pensions and security within 24 hours. (Acts 1977, No. 780, p. 1340, § 6.)

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§ 38-9-9. Same — Immunity of reporter from civil and criminal liability.

Any person, firm or corporation making or participating in the making of a report pursuant to this chapter or participating in a judicial proceeding resulting therefrom shall in so doing be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. (Acts 1977, No. 780, p. 1340, § 7.)

§ 38-9-10. Same — Penalty for failure to make report.

Any physician or other practitioner of the healing arts who shall knowingly fail to make the report required by this chapter shall be guilty of a misdemeanor and shall, upon conviction, be punished by imprisonment for not more than six months or a fine of not more than \$500.00. (Acts 1977, No. 780, p. 1340, § 8.)

§ 38-9-11. Exemption of officers, agents and employees of department from civil liability.

Any officer, agent or employee of the department, in the good faith exercise of his duties under this chapter, shall not be liable for any civil damages as a result of his acts or omissions in rendering assistance or care to any person. (Acts 1977, No. 780, p. 1340, § 10.)

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CHAPTER 5.

PROTECTION FROM ABUSE.

Sec.	Sec.
30-5-1. Short title.	30-5-9. Filing petition when court unavailable; time for holding hearing; certification of documentation as commencement of proceeding.
30-5-2. Definitions.	30-5-10. Rules of Civil Procedure to apply; rights, remedies, etc., of defendant; contempt for violation of order or agreement.
30-5-3. Court jurisdiction.	30-5-11. Construction of chapter.
30-5-4. Right to relief not affected by leaving household.	
30-5-5. Petition for relief.	
30-5-6. Hearing on petition; right to counsel; temporary orders.	
30-5-7. Protection orders; contents, time, amendment, etc.	
30-5-8. Issuance of order.	

Effective date. — The act which added this chapter became effective May 7, 1981.

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§ 30-5-1. Short title.

This chapter shall be known as and may be cited as the "Protection From Abuse Act." (Acts 1981, No. 81-476, p. 826, § 1.)

§ 30-5-2. Definitions.

In this chapter, the words hereinbelow shall have the following meanings unless the context clearly indicates otherwise:

(1) **ABUSE.** The occurrence of one or more of the following acts between family or household members, as defined by the provisions of this chapter, who reside together:

a. Attempting to cause or intentionally, knowingly or recklessly causing physical injury with or without a deadly weapon.

b. Placing by physical menace another in fear of imminent serious physical injury.

c. Abusing minor children as defined under Title 26, chapter 15, known as "The Alabama Child Abuse Act."

(2) **ADULT.** Any person 19 years of age or older, or who otherwise is emancipated.

(3) **COURT.** The circuit court, or when the circuit court judge is unavailable, the district court.

(4) **FAMILY OR HOUSEHOLD MEMBERS.** Spouses, persons living in common-law marriage relationship, parents and children, or other persons related by consanguinity or affinity.

Terms not otherwise defined by this chapter shall have the meaning given to them by the Alabama Criminal Code, Title 13A, or other provisions of law, as the case may be. (Acts 1981, No. 81-476, p. 826, § 2.)

§ 30-5-3. Court jurisdiction.

The courts, as herein provided, shall have jurisdiction over all proceedings under this chapter. (Acts 1981, No. 81-476, p. 826, § 3.)

Collateral references. — 42 C.J.S., Husband and Wife, § 543. 55 C.J.S., Marriage, § 2. 41 Am. Jur. 2d, Husband and Wife, § 3.

§ 30-5-4. Right to relief not affected by leaving household.

The plaintiff's right to relief under this chapter shall not be affected by his or her leaving the residence or household to avoid further abuse. (Acts 1981, No. 81-476, p. 826, § 4.)

§ 30-5-5. Petition for relief.

An adult may seek relief under this chapter for himself or herself, or any parent or adult household member may seek relief under this chapter on behalf of minor children by filing a petition with the court, of proper jurisdiction, alleging abuse by the defendant. (Acts 1981, No. 81-476, p. 826, § 5.)

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§ 30-5-6. Hearing on petition; right to counsel; temporary orders.

(a) Within ten days of the filing of a petition under this chapter a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court shall advise the defendant of his or her right to be represented by counsel. Responsibility for attorney's fees and costs shall be determined and assessed by the court. Nothing herein shall be construed to preclude any person, who is otherwise eligible, from having court appointed counsel.

(b) The court may enter such temporary orders as it deems necessary to protect the plaintiff or minor children from abuse, or the immediate and present danger of abuse to the plaintiff or minor children, upon good cause shown in an ex parte proceeding.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems reasonably necessary. (Acts 1981, No. 81-476, p. 826, § 6.)

Collateral references. — 41 C.J.S., Husband and Wife, §§ 438, 440.

§ 30-5-7. Protection orders; contents, time, amendment, etc.

(a) The court shall be empowered to grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children, which may include:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children;

(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties;

(3) When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff, or by consent agreement allowing the defendant to provide suitable, alternate housing;

(4) Awarding temporary custody of and/or establishing temporary reasonable visitation rights with regard to minor children; and

(5) Ordering the defendant to pay temporary reasonable support for the plaintiff or any child in the plaintiff's custody, or both, when the defendant has a legal obligation to support such person.

(b) Any protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or agreement at any time upon subsequent verified petition filed by either party.

(c) No order or agreement under this chapter shall in any manner affect title to any real property, except final subsequent proceedings available by law. (Acts 1981, No. 81-476, p. 826, § 7.)

Collateral references. — 41 C.J.S., Husband and Wife, §§ 14-16. 67A C.J.S., Parent and Child, §§ 17, 49, 59. 59 Am. Jur. 2d, Parent and Child, §§ 4-10; 50-52.

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§ 30-5-8. Issuance of order.

A copy of any order under this chapter shall be issued to the plaintiff, the defendant and the law enforcement officials with jurisdiction to enforce the order or agreement. (Acts 1981, No. 81-476, p. 826, § 8.)

§ 30-5-9. Filing petition when court unavailable; time for holding hearing; certification of documentation as commencement of proceeding.

(a) When the court is unavailable from the close of regular business, or during holiday recess, a petition may be filed before a circuit court judge, or, when a circuit court judge is unavailable, a district court judge, who may grant relief in accordance with section 30-5-7(a)(2) or 30-5-7(a)(3) if the judge deems it necessary to protect the plaintiff or minor children from abuse, or the immediate and present danger of abuse to the plaintiff or minor children, upon good cause shown in an ex parte proceeding. Any order issued under this subsection will require a hearing to be held within ten days at which time the plaintiff may seek a temporary order from the court.

(b) Any order issued under this section and any documentation in support thereof shall be immediately certified to the court. Such certification to the court shall have the effect of commencing proceedings under section 30-5-5 and invoking the other provisions of this chapter. (Acts 1981, No. 81-476, p. 826, § 9.)

§ 30-5-10. Rules of Civil Procedure to apply; rights, remedies, etc., of defendant; contempt for violation of order on agreement.

(a) Any proceeding under this chapter shall be in accordance with the Rules of Civil Procedure and shall be in addition to any other civil or criminal penalties provided by law. It is specifically provided that any defendant shall have the same rights, remedies and due process where any wrongful action is instituted as any defendant in other civil and criminal actions.

(b) Upon violation of a protection order of a court approved consent agreement, the court may hold the defendant or plaintiff as the case may be, in contempt and punish him in accordance with law. (Acts 1981, No. 81-476, p. 826, § 10.)

§ 30-5-11. Construction of chapter.

The provisions of this chapter are supplemental and shall be construed in pari materia with other laws relating to civil and criminal procedure; provided, however, those laws or parts of laws which are in direct conflict or inconsistent herewith are hereby repealed. (Acts 1981, No. 81-476, p. 826, § 12.)

Collateral references. — 52 Am. Jur. 2d, Marriage, § 3.

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CHAPTER 6.

DOMESTIC VIOLENCE FACILITIES.

Sec.		Sec.	
30-6-1.	Definitions.	30-6-8.	Information deemed confidential; safeguards for obtaining and distributing information.
30-6-2.	Legislative intent.	30-6-9.	Law enforcement officer to advise person of available facility.
30-6-3.	Duties of office of prosecution services; inspection of facilities; exemptions.	30-6-10.	Rules and regulations.
30-6-4.	Duties of district attorneys.	30-6-11.	Collection of fees; distribution of funds; use of unspent funds.
30-6-5.	Report to legislature; contents.	30-6-12.	Immunity from civil liability.
30-6-6.	Requirements for funding and certifying facilities; establishment, organization, etc., procedures.	30-6-13.	Construction of chapter.
30-6-7.	Limitations on appropriation and expenditure of funds.		

Effective date. — The act which added this chapter became effective May 27, 1981.

§ 30-6-1. Definitions.

In this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:

- (1) ABUSE. The occurrence of one or more of the following acts between family members who reside together:
 - a. Attempting to cause or intentionally, knowingly or recklessly causing physical injury with or without a deadly weapon;
 - b. Placing by physical menace another in fear of imminent serious physical injury;
 - c. Abusing minor children as defined under Title 26, chapter 15, known as "The Alabama Child Abuse Act."
- (2) SPOUSE. A person to whom another is married.
- (3) OFFICE. The office of prosecution services.
- (4) DOMESTIC VIOLENCE SHELTER OR FACILITY. A facility which provides services or shelter to victims as herein defined and which has been certified by the office of prosecution services to receive matching funds.
- (5) VICTIM. Any individual suffering assault, battery, rape or other physical abuse inflicted by his or her spouse, or others, and any dependent of such individual, including a child.

Terms not otherwise defined by this chapter shall have the meaning given to them by the Alabama Criminal Code, Title 13A, or other provisions of law, as the case may be. (Acts 1981, No. 81-813, p. 1452, § 1.)

§ 30-6-2. Legislative intent.

The legislature recognizes that certain persons who assault, batter, or otherwise abuse their children, spouses and other family members and the persons subject to such abuse are in need of treatment and rehabilitation. It is

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the intent of the legislature to assist in the development of domestic violence shelters and services for the victims of such abuse and to provide a place where the parties involved may be separated until they can be properly assisted. (Acts 1981, No. 81-813, p. 1452, § 2.)

Collateral references. — 7 C.J.S., Asylums, §§ 2, 4, 67A C. J. S., Parent and Child, § 15. 59 Am. Jur. 2d, Parent and Child, §§ 9, 14.

§ 30-6-3. Duties of office of prosecution services; inspection of facilities; exemptions.

(a) It shall be the duty of the office:

- (1) To establish minimum program requirements and standards for certifying domestic violence facilities to receive state funds;
- (2) To receive applications for state funding of such facilities;
- (3) To approve or reject each application within 60 days of receipt of the application;
- (4) To distribute funds to a certified facility within 45 days after approval;
- (5) To evaluate annually each shelter for compliance with the minimum standards.

(b) The office or the district attorney from any participating circuit shall have the right to enter and inspect the premises of domestic violence shelter at any reasonable hour in order to effectively evaluate the state of compliance of such facility with the provisions of this chapter and rules in force pursuant thereto.

(c) The executive committee of the Alabama District Attorneys Association shall prescribe by rule the procedures by which subdivision (1) of subsection (a) shall be implemented.

(d) Any facility which shelters children, pursuant to the provisions of this chapter, shall be exempt from the provisions of Title 38, chapter 7. (Acts 1981, No. 81-813, p. 1452, § 3.)

Collateral references. — 7 C.J.S., Asylums, §§ 3, 5, 11.

§ 30-6-4. Duties of district attorneys.

Without using designated shelter funds, the respective district attorneys of each participating circuit may, within their jurisdiction and community:

(1) Formulate and conduct a research and evaluation program on domestic violence and cooperate with and assist and participate in programs of other properly qualified agencies, including any agency of the state, federal government, schools of medicine, hospitals, and clinics, in planning and conducting research on the prevention, care, treatment, and rehabilitation of persons engaged in or subject to domestic violence;

(2) Serve as a clearinghouse for information relating to spouse abuse and domestic violence;

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(3) Carry on educational programs on domestic violence for the benefit of the general public, persons engaged in or subject to spouse abuse, professional persons, or others who care for or may be engaged in the care and treatment of persons engaged in or subject to spouse abuse and domestic violence; and

(4) Enlist the assistance by contract or otherwise, of public and voluntary health, education, welfare, and rehabilitation centers or agencies in a concerted effort to prevent spouse abuse, child abuse and domestic violence and to treat or provide shelter for persons engaged in or subject to such abuse or violence. (Acts 1981, No. 81-813, p. 1452, § 4.)

Collateral references. — 7 C.J.S., Asylums, § 5.

§ 30-6-5. Report to legislature; contents.

On or before 60 days prior to each regular session of the legislature, each participating district attorney shall report to the office, pursuant to section 12-17-221, and the provisions of this chapter, and the office shall furnish to the president of the senate and the speaker of the house of representatives, on or before the third day of each regular session, a report on the status of domestic violence and spouse abuse in Alabama which shall include, but not be limited to, the following:

(1) Incidence of domestic violence, spouse and child abuse in this state, in each circuit and in each county;

(2) Identification of the areas of the state where such activity is of significant proportions, indicating the number of cases officially reported as well as an assessment of the degree of unreported cases of spouse abuse;

(3) Identification and description of the types of programs in the state that assist victims or persons initiating such violence and abuse, including information on funding for the programs;

(4) The number of persons treated by or assisted by local programs or centers receiving funding;

(5) A statement on the effectiveness of such programs in preventing future domestic violence and spouse abuse;

(6) An inventory and evaluation of existing prevention programs; and

(7) A listing of potential prevention efforts identified by each facility, county or circuit or by the office; the estimated annual cost of providing such prevention services, both for a single client and for the anticipated target population as a whole; identification of potential funding sources; and the projected benefits of providing such services. (Acts 1981, No. 81-813, p. 1452, § 5.)

Collateral references. — 7 C.J.S., Asylums, § 5.

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§ 30-6-6. Requirements for funding and certifying facilities; establishment, organization, etc., procedures.

(a) In order to be funded and certified, each facility shall:

(1) Provide a shelter, whether public or private, which will serve as a center to receive and house persons who are domestic violence victims;

(2) Receive the periodic written endorsement of the participating circuit's district attorney and the local law enforcement agency within the jurisdiction of the site;

(3) Receive 50 percent of its funding from one or more local, municipal, or other county sources, public or private. Funding generated pursuant to section 30-6-11 shall not be included in calculating this 50 percent. Contributions or services in kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part of the required local funding. Provided, however, the executive committee of the Alabama District Attorneys Association shall have in writing the weight that is given for each such in kind contribution; and

(4) Provide minimum services which shall include, but not be limited to, information and referral services, counseling services, temporary emergency shelter for more than 24 hours, and educational services for community awareness relative to the incidence of domestic violence, child and spouse abuse, the prevention of such abuse, and the care, treatment, and rehabilitation for persons engaged in or subject to such abuse.

(b) Domestic violence facilities may be established throughout the state as private, local, state, or federal funds are available. Any local agency or organization may apply to participate in certification and state funding. No provision of this chapter shall be construed to prohibit any such agency or organization from uniting with a like agency or organization, within or without the same county or within or without any adjacent circuit, in the joint establishment or operation of any domestic violence facility.

(c) The facilities shall establish procedures pursuant to which persons subject to domestic violence may seek services from these facilities on a voluntary basis.

(d) Each facility shall have a board composed of at least three citizens, one of whom shall be a member of a local, municipal, or county law enforcement agency.

(e) No individual facility shall receive a total amount in excess of \$75,000.00 annually.

(f) Each facility shall submit their proposed budget at the request of the office and prior to any application for funds. (Acts 1981, No. 81-813, p. 1452, § 6.)

Collateral references. — 7 C.J.S., Asylums, § 3.

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§ 30-6-7. Limitations on appropriation and expenditure of funds.

Each circuit shall receive a proportionate share of the total funding appropriated, as the population of the circuit or circuits jointly bear to the total population of the state, according to the most recent federal decennial census, for implementation of the provisions of this chapter. Each facility shall receive the matching funds as determined by the policy adopted by the office. The formula for such funding shall be deemed a public record. In no event shall any facility expend in excess of five percent of the available matching funds to administer the provisions of this chapter. Nor shall the office expend in excess of ten percent of the funds administered by it to implement the provisions of this chapter. (Acts 1981, No. 81-813, p. 1452, § 7.)

Collateral references. — 7 C.J.S., Asylums, § 3.

§ 30-6-8. Information deemed confidential; safeguards for obtaining and distributing information.

Information received by the office, the circuit, any district attorney or his employees, or by authorized persons employed by or volunteering services to a facility, through files, reports, inspection, or otherwise, shall be deemed confidential information, except as otherwise herein provided, and shall not be disclosed publicly in such a manner as to identify individuals or facilities. Each facility, with the approval of the office, shall establish its own rules, regulations and policies for the performance of the responsibilities charged to it in this chapter. The office shall ensure that the information obtained under authority of this chapter shall be restricted to the items germane to the implementation thereof and shall ensure that the provisions are administered so as not to accumulate any information or distribute any information that is not required by this chapter. The office and each participating district attorney shall ensure that adequate safeguards are incorporated so that data available is used only by properly authorized persons, facilities and agencies. (Acts 1981, No. 81-813, p. 1452, § 8.)

§ 30-6-9. Law enforcement officer to advise person of available facility.

Where facilities are available, any law enforcement officer who investigates an alleged incident of domestic violence may advise the person subject to the abuse of the availability of a facility from which he or she may receive services. (Acts 1981, No. 81-813, p. 1452, § 9.)

§ 30-6-10. Rules and regulations.

The office is authorized to promulgate, issue and implement reasonable rules, regulations and standards necessary to administer and implement the provisions of this chapter. (Acts 1981, No. 81-813, p. 1452, § 10.)

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Collateral references. — 7 C.J.S., Asylums,
§ 13.

§ 30-6-11. Collection of fees; distribution of funds; use of unspent funds.

Commencing October 1, 1981, and thereafter, in addition to any and all other fees collected for any marriage license, the probate judge shall collect \$5.00 which shall be forwarded to the district attorney of the judicial circuit of his county. Such funds shall be designated only for the purposes of this chapter, and forwarded monthly to the office for distribution on a formula, pursuant to the provisions of section 30-6-7 and other provisions of this chapter. Provided, however, no unspent and unencumbered funds generated by this chapter shall revert to the general fund of the state treasury at the end of the fiscal year. The second full fiscal year after the enactment of the provisions of this chapter any such unspent and unencumbered funds shall be returned to the respective judicial circuits from which they were generated. The district attorney shall use such funds exclusively for the purposes of law enforcement related to abuse as defined by this chapter. (Acts 1981, No. 81-813, p. 1452, § 11.)

§ 30-6-12. Immunity from civil liability.

Any person, firm, corporation or official acting pursuant to this chapter, or participating in a judicial proceeding resulting therefrom, shall, in so doing, be immune from any civil liability that otherwise might be incurred or imposed. (Acts 1981, No. 81-813, p. 1452, § 12.)

§ 30-6-13. Construction of chapter.

The provisions of this chapter are supplemental and shall be construed in pari materia with other laws relating to domestic relations, abuse and law enforcement; and provided, that those laws or parts of laws which are in direct conflict or inconsistent herewith are hereby repealed. (Acts 1981, No. 81-813, p. 1452, § 14.)

Category	Citation
1. Victim Compensation Program	18.67.010 et seq.
1.1 Responsible Agency	18.67.020
1.2 Eligible Claimants	18.67.080
1.3 Losses Covered	18.67.110
1.4 Minimum and Maximum Award	18.67.130(4)(c)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	18.67.130(2)
1.7 Filing of Claim - Time Limit	18.67.130(1)
1.8 Emergency Award	18.67.120
1.9 Funding	18.67.162
2. Restitution	
2.1 Sentencing Option	12.55.045; 12.55.100(2)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	12.55.051; 18.67.165
4. Witness Fees	
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	11.56.510 et seq.; 11.56.900
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	18.67.175
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	12.80.050
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	12.45.048(7)
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
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Chapter 67. Violent Crimes Compensation Board.

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Sec. 18.67.010. Purpose. It is the purpose of this chapter to facilitate and permit the payment of compensation to innocent persons injured, to dependents of persons killed, and to certain other persons who by virtue of their relationship to the victim of a crime incur actual and reasonable expense as a result of certain serious crimes or in attempts to prevent the commission of crime or to apprehend suspected criminals. (§ 1 ch 203 SLA 1972; am § 1 ch 132 SLA 1975)

Sec. 18.67.020. Violent Crimes Compensation Board. (a) There is the Violent Crimes Compensation Board in the Department of Public Safety composed of three members to be appointed by the governor. One of the members shall be designated as chairman by the governor. At least one member shall be a medical or osteopathic physician licensed to practice in this state and one member shall be an attorney licensed to practice in this state.

(b) The term of office of each member of the board is three years, except that of the members first appointed one shall be appointed for a term of three years, one for a term of two years, and one for a term of one year. All vacancies, except through the expiration of term, shall be filled for the unexpired term only.

(c) Each member of the board is eligible for reappointment and serves at the pleasure of the governor.

(d) Each member of the board is eligible for reappointment and any member of the board may be removed by the governor for inefficiency, neglect of duty or malfeasance in office after due notice and hearing.

(e) Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards.

(f) The board may appoint one or more hearing officers, who must be licensed to practice law in the state, to conduct hearings and take testimony in proceedings under this chapter, but final determinations of any matter shall be only by the board. A hearing officer acting under this section shall report his findings of fact and conclusions of law to the board, together with the reasons for the findings and conclusions. The board shall act only after consideration of the report and other evidence that it considers appropriate.

(g) The board may appoint and fix the duties of personnel necessary for carrying out its functions under this chapter. (§ 1 ch 203 SLA 1972; am § 2 ch 132 SLA 1975; am § 1 ch 87 SLA 1978)

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Effect of amendments. — The 1978 amendment substituted "Department of Public Safety" for "Department of Health and Social Services" in the first sentence of subsection (a).

Sec. 18.67.030. Application for compensation. (a) A person who may be eligible for compensation under this chapter may make application to the board. In a case in which the person entitled to make application is a minor, the application may be made on his behalf by his parent or guardian. In a case in which the person entitled to make application is mentally incompetent, the application may be made on his behalf by his parent, guardian or other individual authorized to administer his estate.

(b) In order to be eligible for compensation under this chapter, the applicant shall, before a hearing on an application under this chapter, submit reports, if reasonably available, from all physicians or surgeons who have treated or examined the victim in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or a report on the cause of death of the victim by an impartial medical expert would be of material aid to its determination, the board shall order the reports and examination. (§ 1 ch 203 SLA 1972)

Sec. 18.67.040. Action on application; hearings. (a) Upon application made under the provisions of this chapter, the board shall consider the application and rule on it. The board may, upon its own motion, order a hearing, specifying the time and place it is to be held; if a hearing is ordered, the board shall give notice to the applicant. If, after consideration without a hearing, the decision is unfavorable to the applicant, in whole or in part, the board shall furnish him a written statement of the reason for the ruling. If, within 30 days after receipt of this statement, the applicant requests a hearing on his application, the board shall specify a time and place for a hearing and shall give notice to the applicant. If no request for a hearing is made within the specified time, the decision of the board is final.

(b) For the purpose of carrying out the provisions of this chapter, the board or its hearing officer may hold the hearings, sit and act at the times and places, and take the testimony that it or he considers advisable. The board or its hearing officer may administer oaths or affirmations to witnesses. The board has full powers of subpoena and compulsion of attendance of witnesses and production of documents, but no subpoena shall be issued except under the signature of a member 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 are served by any person designated by the board.

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(c) The applicant 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. The board or its hearing officer also may hear other persons who in its or his judgment may have relevant evidence to submit.

(d) Admissibility of evidence is governed by the Administrative Procedure Act (AS 44.62).

(e) If a person has been convicted of an offense with respect to an act on which a claim under this chapter 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.

(f) Orders and decisions of the board shall be final. (§ 1 ch 203 SLA 1972; am § 3 ch 132 SLA 1975)

Sec. 18.67.050. Attorney fees. The board may, as part of an order entered under this chapter, determine and allow reasonable attorney fees, which may not exceed 25 per cent of the first \$1,000 amount awarded as compensation, 15 per cent of the next \$9,000 amount awarded as compensation, and 7.5 per cent of the amount awarded as compensation over \$10,000 under AS 18.67.070, to be paid in addition to the amount of the compensation, to the attorney representing the applicant. It is unlawful for the attorney to ask for, contract for, charge, demand, collect or receive a larger sum than the amount allowed by the board in the award of attorney fees. An attorney who violates this section shall forfeit any fee awarded and shall repay the state the fee awarded under this section. (§ 1 ch 203 SLA 1972; am § 4 ch 132 SLA 1975)

Sec. 18.67.060. Regulations. In the performance of its functions, the board is authorized to make, rescind and amend regulations prescribing the procedures to be followed in the filing of applications and in proceedings under this chapter, and relating to other matters the board considers appropriate. (§ 1 ch 203 SLA 1972)

Sec. 18.67.070. Standards for compensation. For the purpose of determining the amount of compensation payable under this chapter, the board shall, insofar as practicable, formulate standards for uniform application of this chapter and take into consideration rates and amounts of compensation payable for injuries and death under other laws of the state and of the United States and the availability of funds appropriated for the purposes of this chapter. (§ 1 ch 203 SLA 1972)

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Sec. 18.67.080. Awarding compensation. (a) In a case in which a person is injured or killed by an incident specified in AS 18.67.101(1), or by the act of any other person which is within the description of offenses listed in AS 18.67.101(2), the board may order the payment of compensation in accordance with the provisions of this chapter:

(1) to or for the benefit of the injured person;

(2) in the case of personal injury or death of the victim, to a person responsible or who had been responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury or death;

(3) in the case of death of the victim, to or for the benefit of one or more of the dependents of the victim; or

(4) to the provider of a service under AS 18.67.110(b).

(b) For the purposes of this chapter, a person is considered to have intended an act notwithstanding that by reason of age, insanity, drunkenness, or otherwise, he was legally incapable of forming a criminal intent

(c) In determining whether to make an order under this section, the board shall consider all circumstances determined to be relevant, including provocation, consent or any other behavior of the victim which directly or indirectly contributed to his injury or death, the prior case or social history, if any, of the victim, his need for financial aid, and any other relevant matters.

(d) An order may be made under this section whether or not a person is prosecuted or convicted of an offense arising out of the act which caused the injury or death involved in the application. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under this chapter for a period it considers appropriate on the ground that a prosecution for an offense arising out of the act which caused the injury or death involved in the application has been commenced or is imminent. (§ 1 ch 203 SLA 1972; am § 5 ch 132 SLA 1975; am § 3 ch 35 SLA 1979; am § 1 ch 96 SLA 1983)

Sec. 18.67.090. Recovery from collateral source. (a) Up to the maximum set in AS 18.67.130(c), the board may award compensation for losses and expenses allowable under AS 18.67.110 for which the applicant is not compensated by the offender or a person on behalf of the offender, or by the United States, a state, or any of its subdivisions or agencies, or a private source or emergency awards under AS 18.67.120, for injury or death compensable under this chapter.

(b) If compensation is awarded under this chapter and the person receiving it also receives a collateral sum under (a) of this section which has not been deducted from it, the board may require that he refund either the amount of the collateral sum or the amount of compensation paid to him under this chapter, whichever is less.

(c) Notwithstanding the provisions of (a) and (b) of this section, in the case of the death of a victim, the value of a life insurance policy may not be considered a collateral sum that may be deducted under this section. (§ 1 ch 203 SLA 1972; am § 6 ch 132 SLA 1975)

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Sec. 18.67.101. Incidents and offenses to which AS 18.67.010 — 18.67.180 apply. The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death which resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses: murder in any degree, manslaughter, criminally negligent homicide, assault in the first or second degree, kidnapping, sexual assault in any degree, sexual abuse of a minor, robbery in any degree, contributing to the delinquency of a minor under AS 11.51.130(a)(4), threats to do bodily harm, or driving while intoxicated or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is intoxicated. (§ 2 ch 35 SLA 1979; am § 2 ch 96 SLA 1983)

Sec. 18.67.110. Nature of the compensation. (a) The board may order the payment of compensation under this chapter for

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) loss of earning power as a result of total or partial incapacity of the victim, and reasonable expenses of job retraining or of similar employment-oriented rehabilitative services for the victim;

(3) pecuniary loss to the dependents of the deceased victim; and

(4) any other loss resulting from the personal injury or death of the victim which the board determines to be reasonable.

(b) The board may order that compensation under (a) of this section for a service provided as a result of the personal injury or death of the victim be paid directly to the provider of the service. (§ 1 ch 203 SLA 1972; am § 7 ch 132 SLA 1975; am § 3 ch 96 SLA 1983)

Sec. 18.67.120. Emergency compensation. If it appears to the board that, prior to taking action on an application, the claim is one for which compensation is probable, and undue hardship will result to the applicant if immediate payment is not made, the board may make an emergency award of compensation to the applicant pending a final decision in the case. However,

(1) the amount of the emergency compensation may not exceed \$1,500;

(2) the amount of the emergency compensation shall be deducted from the final compensation made to the applicant;

(3) the excess of the amount of the emergency compensation over the final amount shall be repaid by the applicant to the board. (§ 1 ch 203 SLA 1972; am § 8 ch 132 SLA 1975)

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Sec. 18.67.130. Limitations on awarding compensation. (a) No order for the payment of compensation may be made under AS 18.67.080 unless

(1) the application has been made within two years after the date of the personal injury or death;

(2) the personal injury or death was the result of an incident or offense listed in AS 18.67.101 that had been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made; and

(3) in the discretion of the board, the applicant has cooperated with law enforcement and prosecution officials to further prosecution of the offender if appropriate and to avoid further injury by the offender to the applicant and injury to persons in the care of the applicant who are exposed to possible injury by the offender.

(b) No compensation may be awarded if the victim

(1) *[Repealed, § 8 ch 96 SLA 1983.]*

(2) *[Repealed, § 8 ch 96 SLA 1983.]*

(3) violated a penal law of the state, which violation caused or contributed to his injuries or death; or

(4) is injured as a result of the operation of a motor vehicle, boat or airplane unless the vehicle was used by the offender while intoxicated or as a weapon in deliberate attempt to injure or kill the victim.

(c) No compensation may be awarded under this chapter in an amount in excess of \$25,000 per victim per incident. However, in the case of the death of a victim who has more than one dependent eligible for compensation, the total compensation that may be awarded as a result of that death may not exceed \$40,000. The board may prorate the total awarded among those dependents according to relative need.

(d) Orders for payment of compensation under this chapter may be made only as to injuries or death resulting from incidents or offenses occurring on and after July 1, 1971. (§ 1 ch 203 SLA 1972; am §§ 9, 10 ch 132 SLA 1975; am § 4 ch 35 SLA 1979; am §§ 4 — 6, 8 ch 96 SLA 1983)

Sec. 18.67.140. Recovery from offender. When an order for the payment of compensation for personal injury or death is made under this chapter, the board, upon payment of the amount of the order, is subrogated to the cause of action of the applicant against the person responsible for the injury or death and is entitled to bring an action against the person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the board shall pay the balance to the applicant. (§ 1 ch 203 SLA 1972)

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Sec. 18.67.150. False claim. A person who knowingly makes a false claim under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$500, or by imprisonment for not more than one year, or by both, and shall forfeit any benefit received and shall repay the state for payment of compensation made under this chapter. (§ 1 ch 203 SLA 1972)

Sec. 18.67.160. 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, except that if the death occurs after an application for compensation has been filed with the Violent Crimes Compensation Board, the proceeding does not abate, but may be continued by the legal representative of the decedent's estate. (§ 1 ch 203 SLA 1972)

Sec. 18.67.162. Crime victim compensation fund. There is created a crime victim compensation fund which shall be administered by the Violent Crimes Compensation Board. The fund consists of money appropriated to it by the legislature. The fund shall be administered in accordance with the provisions of this chapter. Money distributed from the fund shall be in addition to other sources of compensation provided in this chapter. (§ 7 ch 96 SLA 1983)

Sec. 18.67.165. Distribution of money received as a result of the commission of crime. (a) Every person contracting with a person, or the representative or assignee of a person, accused of a crime in this state, with respect to the reenactment of that crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of that person's thoughts, feelings, opinions or emotions regarding the crime, shall pay to the board any money which would otherwise, by terms of the contract, be owing to the person accused or his representatives. The board shall deposit the money in an escrow account for the benefit of any victim of a crime committed by the person and payable to a victim, provided that the person accused is convicted of the crime and the victim, within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against the person accused or his representatives.

(b) Upon disposition of charges favorable to a person accused of committing a crime, or upon a showing by a person that five years have elapsed from the establishment of the escrow account and no actions are pending against that person under this section, the board shall immediately pay any money in the escrow account to that person.

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(c) If an escrow account is established under this section, no otherwise applicable statute of limitation on the time within which civil action may be brought bars action by a victim of a crime committed by the person accused or convicted of the crime as to a claim resulting from the crime until five years have elapsed from the time the escrow account was established.

(d) The board shall make payments from an escrow account to any person accused of crime upon a court order after a showing by that person that

(1) the money will be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against that person, including the appeals process; and

(2) the person has insufficient assets, other than funds in the escrow account and assets which could be claimed as exempt from execution under state law, to provide for payment of expenses of legal representation.

(e) Any action taken by a person convicted of a crime to defeat the purpose of this section is void as against the public policy of this state. (§ 2 ch 87 SLA 1978)

Sec. 18.67.170. Reports. The board shall prepare and transmit to the governor and legislature annually a report of its activities under this chapter including a brief description of the facts in each case and the amount of compensation awarded. (§ 1 ch 203 SLA 1972; am § 1 ch 1 SLA 1977)

Effect of amendments. — The 1977 amendment deleted "the name of each applicant" following "under this chapter" including" and deleted a comma following "facts in each case."

Sec. 18.67.175. Duty to display information. (a) Every hospital licensed by this state shall display prominently in its emergency room, main entrance, and business office posters notifying the public of the existence and general provisions of this chapter. The board may set standards for the location of this display and shall provide posters and general information regarding the provisions of this chapter to each hospital and to each physician licensed to practice medicine in the state.

(b) Every law enforcement agency in the state shall inform victims of violent crimes, or their surviving dependents, of the provisions of this chapter and shall provide application forms to the victims, or their dependents, who desire to seek compensation under this chapter. The board shall provide application forms, all other documents and general information which law enforcement agencies may require to comply with this subsection. (§ 11 ch 132 SLA 1975)

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Sec. 18.67.180. Definitions. In this chapter

(1) "board" means the Violent Crimes Compensation Board;

(2) "dependent" means a relative of a deceased victim, who was dependent upon the victim's income at the time of his death; children of a victim born after a victim's death are included;

(3) "personal injury" means actual bodily harm;

(4) "relative" means spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parents;

(5) "victim" means a person who is injured or killed by an incident or offense specified in AS 18.67.101. (§ 1 ch 203 SLA 1972; am § 5 ch 35 SLA 1979)

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from his conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. (§ 12 ch 166 SLA 1978; am § 38 ch 102 SLA 1980)

Sec. 12.55.051. Enforcement of fines and restitution. (a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why he should not be sentenced to imprisonment for nonpayment. If the court finds by a preponderance of the evidence that the default was attributable to an intentional refusal or failure to make a good faith effort to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

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(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) Pursuant to a petition filed by a defendant who has been sentenced to pay a fine or restitution or an installment, the court, upon a finding of inability to pay, may order modification of the fine or restitution, subject to conditions the court finds appropriate. (§ 12 ch 166 SLA 1978)

Sec. 12.55.100. Conditions of probation. (a) While on probation and among the conditions of probation, the defendant may be required

- (1) to pay a fine in one or several sums;
- (2) to make restitution or reparation to aggrieved parties for actual damages or loss caused by the crime for which conviction was had;
- (3) to provide for the support of any persons for whose support he is legally responsible; and
- (4) to perform community work.

(b) The defendant's liability for a fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation. (§ 8.10 ch 34 SLA 1962; am § 13 ch 166 SLA 1978)

* * *

Sec. 11.56.510. Interference with official proceedings. (a) A person commits the crime of interference with official proceedings if the person

- (1) uses force on anyone, damages the property of anyone, or threatens anyone with intent to

(A) improperly influence a witness or otherwise influence the testimony of a witness;

(B) influence a juror's vote, opinion, decision, or other action as a juror;

(C) retaliate against a witness or juror because of participation by the witness or juror in an official proceeding; or

(D) otherwise affect the outcome of an official proceeding; or

(2) confers, offers to confer, or agrees to confer a benefit

(A) upon a witness with intent to improperly influence that witness; or

(B) upon a juror with intent to influence the juror's vote, opinion, decision, or other action as a juror or otherwise affect the outcome of an official proceeding.

(b) Interference with official proceedings is a class B felony. (§ 6 ch 166 SLA 1978)

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Sec. 11.56.540. Tampering with a witness in the first degree.

(a) A person commits the crime of tampering with a witness in the first degree if the person knowingly induces or attempts to induce a witness to

(1) testify falsely, offer misleading testimony, or unlawfully withhold testimony in an official proceeding; or

(2) be absent from a judicial proceeding to which the witness has been summoned.

(b) Tampering with a witness in the first degree is a class C felony. (§ 6 ch 166 SLA 1978; am § 1 ch 122 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "in the first degree if the person" for "if he" in the introductory language of subsection (a); substituted "be absent from a judicial proceeding" for "absent himself from an official proceeding" and "the witness" for "he" in paragraph (2) of subsection (a); and inserted "in the first degree" and substituted "class C felony" for "class A misdemeanor" in subsection (b).

Collateral references. — Procuring or attempting to procure witness to leave jurisdiction as contempt, 21 ALR 247; 33 ALR 607.

Falsity of contemplated testimony as

condition of offense of bribery of, attempt to bribe, or acceptance of bribe or gift by, prospective witness, 110 ALR 582.

When statute of limitations begins to run on charge of obstructing justice or of conspiring to do so, 77 ALR3d 725.

Admissibility in criminal case, on issue of defendant's guilt, of evidence that third person has attempted to influence a witness not to testify or to testify falsely, 79 ALR3d 1156.

Validity, construction, and application of state statutes imposing criminal penalties for influencing, intimidating, or tampering with witness, 8 ALR4th 769.

Sec. 11.56.545. Tampering with a witness in the second degree. (a) A person commits the crime of tampering with a witness in the second degree if the person knowingly induces or attempts to induce a witness to be absent from an official proceeding, other than a judicial proceeding, to which the witness has been summoned.

(b) Tampering with a witness in the second degree is a class A misdemeanor. (§ 2 ch 122 SLA 1982)

* * *

Article 7. General Provisions.

Section

900. Definitions

Sec. 11.56.900. Definitions. In this chapter, unless the context requires otherwise,

(1) "improperly influence a witness" means to cause or induce a witness to

(A) testify falsely, offer misleading testimony, or unlawfully withhold testimony in an official proceeding;

(B) avoid or attempt to avoid legal process summoning the witness to testify in an official proceeding, regardless of whether legal process has issued;

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(C) be absent from an official proceeding to which the witness has been summoned; or

(D) engage in conduct described in AS 11.56.610;

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

(3) "juror" means a person who is a member of an impanelled jury or a person who has been drawn or summoned to attend as a prospective juror;

(4) "physical evidence" means an article, object, document, record, or other thing of physical substance;

(5) "testimony" means oral or written statements, documents, or other material that may be offered by a witness in an official proceeding;

(6) "witness" means

(A) a witness summoned or appearing in an official proceeding; or

(B) a person who the defendant believes may be called as a witness in an official proceeding, present or future. (§ 6 ch 166 SLA 1978; am § 20 ch 12 SLA 1980)

* * *

Sec. 12.80.050. Photographic evidence of property wrongfully taken or damaged. (a) In a criminal proceeding or a children's court proceeding involving the wrongful taking or damaging of property, photographs of the property are competent evidence of the property and are admissible in the proceeding to the same extent as if the property had been introduced as evidence.

(b) Photographs of property that are to be introduced as evidence under this section shall be accompanied by a written description of the property, the name of the owner of the property, the location where the alleged crime occurred, the name of the investigating peace officer, the date the photograph was taken, and the name and signature of the photographer. The written description shall be signed by the investigating peace officer under penalty of perjury under AS 09.63.020. (§ 40 ch 143 SLA 1982)

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Chapter 24. Protection of the Elderly.

Section	Section
10. Reports of harm	60. Authority of the department
20. Action on reports	70. Regulations
30. Protective services	75. Quarterly report
40. Review and referral	100. Definitions
50. Confidentiality of reports	

Cross references. — For statement of legislative purpose in enacting AS 47.24, see § 1, ch. 36, SLA 1983, in the Temporary and Special Acts.

Sec. 47.24.010. Reports of harm. (a) The following persons who, in the performance of their professional duties, have reasonable cause to believe that an elderly person has suffered harm shall, not later than 24 hours after first having cause for the belief, report the harm to the Department of Health and Social Services:

- (1) a physician or other licensed health care provider;
- (2) a mental health professional as defined in AS 47.30.915(11);
- (3) a pharmacist;
- (4) an administrator of a nursing home, residential care or health care facility;
- (5) a guardian or conservator;
- (6) a police officer;
- (7) a village public safety officer;
- (8) a village health aide;
- (9) a social worker;
- (10) a member of the clergy;
- (11) a staff employee of a project funded by the Older Alaskans Commission;
- (12) an employee of a homemaker program or home health aide program;
- (13) an emergency medical technician or a paramedic in the mobile intensive care program.

(b) A report of harm made under this section may include the name and address of the person reporting the harm and shall include

- (1) the name and address of the elderly person;
- (2) information relating to the nature and extent of the harm;
- (3) other information that the person reporting the harm believes might be helpful in an investigation of the case or in providing protection for the elderly person.

(c) A person who fails to comply with this section is guilty of a violation as defined in AS 11.81.900(55).

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(d) This section does not prohibit a person listed in (a) of this section from reporting cases of economic or physical harm to an elderly person that have come to the person's attention in a nonprofessional capacity. This section does not prohibit any other person from reporting economic harm to an elderly person that the person has reasonable cause to believe is a result of theft, fraud, or coercion by a caretaker of the elderly person, or physical harm to an elderly person that the person has reasonable cause to believe is a result of abuse, neglect, or abandonment.

(e) If immediate action is necessary to protect the elderly person from imminent harm, the person shall make the report of harm to a police officer or a village public safety officer. The police officer or village public safety officer shall take immediate action to protect the elderly person and shall, at the earliest opportunity, notify the department.

(f) A person who, in good faith, makes a report of economic or physical harm to an elderly person under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability that might otherwise be incurred or imposed.

(g) Failure to make a report under subsections (a) and (d) of this section is not the basis of civil liability unless otherwise provided by law. (§ 2 ch 36 SLA 1983)

Sec. 47.24.020. Action on reports. (a) Upon receiving a report of harm, the department shall promptly initiate an investigation to determine the economic or physical condition of the elderly person named in the report and whether action or services are needed for the protection of the elderly person. The department shall personally interview the elderly person during the investigation, unless the elderly person is unconscious or otherwise physically or mentally impaired to such an extent as to be unable to respond to questions.

(b) The department shall prepare a written report of the investigation, including findings, recommendations, and a determination of whether and what kind of protective services are to be offered to the elderly person. Upon request, the person who reported harm to the elderly person shall be notified of the status of the investigation. The department shall provide to the Department of Law a copy of each report of an investigation of harm to an elderly person if the report of harm is confirmed to be true.

(c) The department shall immediately terminate an investigation under this section upon the request of an elderly person who is the subject of a report of harm. However, if the department has reasonable cause to believe that the elderly person is incapacitated, the department may petition the superior court under AS 13.26 for appointment of a guardian or temporary guardian for the elderly person for the purpose of obtaining consent to continue the investigation. (§ 2 ch 36 SLA 1983)

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Sec. 47.24.030. Protective services. (a) The department shall provide available protective services to a harmed elderly person if and to the extent to which the elderly person consents. If the department has reasonable cause to believe that the elderly person lacks the capacity to consent to receiving protective services, it may petition the superior court under AS 13.26 for appointment of a guardian or temporary guardian for the elderly person for the purpose of obtaining consent.

(b) If an elderly person who has consented to receiving protective services is prevented by a caretaker from receiving the services, the department may assist the elderly person to petition the superior court for an injunction restraining the caretaker from interfering with the provision of protective services to the elderly person. (§ 2 ch 36 SLA 1983)

Sec. 47.24.040. Review and referral. The department shall, not later than 90 days after initiating the provision of protective services to an elderly person, initiate a review of the case to determine whether continuation or modification of protective services that are being provided is warranted. The department shall reevaluate the case every 90 days thereafter until the case is closed. (§ 2 ch 36 SLA 1983)

Sec. 47.24.050. Confidentiality of reports. (a) Investigation reports and reports of harm filed under this chapter are confidential and are not subject to public inspection and copying under AS 09.25.110 — 09.25.125. However, in accordance with this chapter and regulations adopted under this chapter, investigation reports may be used by appropriate governmental agencies inside and outside the state, in connection with investigations or judicial proceedings involving harm to an elderly person.

(b) The department shall disclose a report of harm if the elderly person who is the subject of the report consents in writing. The department shall, upon request, disclose the number of verified reports of harm that occurred at an institution for care of the elderly. (§ 2 ch 36 SLA 1983)

Sec. 47.24.060. Authority of the department. In performing its duties under this chapter, the department may, subject to the elderly person's consent, initiate actions necessary to assure the health, safety and welfare of an elderly person, including the transfer of the elderly person from a nursing home, residential care or health care facility. (§ 2 ch 36 SLA 1983)

Sec. 47.24.070. Regulations. Regulations to implement this chapter shall be approved by the Older Alaskans Commission (AS 44.21.200) before adoption by the department. (§ 2 ch 36 SLA 1983)

Sec. 47.24.075. Quarterly report. The department shall submit to the Older Alaskans Commission each quarter a statistical report of the department's activities related to the protection of elderly persons in the state. The report may not disclose the identity of victims or perpetrators of the harm. (§ 2 ch 36 SLA 1983)

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Sec. 47.24.100. Definitions. In this chapter

- (1) "abandonment" means desertion of an elderly person by a caretaker;
- (2) "abuse" means the infliction of physical pain or injury, the infliction of mental anguish that requires medical attention, or the deprivation by a caretaker of services that are necessary to maintain the physical and mental health of an elderly person;
- (3) "caretaker" means a person who is responsible for the care of an elderly person as a result of a family relationship, or who has assumed responsibility for the care of an elderly person voluntarily, by contract, or by court order;
- (4) "department" means the Department of Health and Social Services;
- (5) "economic harm" means intentional economic exploitation of an elderly person resulting from theft, fraud, or coercion by a caretaker of the elderly person;
- (6) "elderly person" means a resident of Alaska who is 65 years of age or older;
- (7) "harm" means physical harm or economic harm;
- (8) "incapacitated" means a person's ability to receive and evaluate information or to communicate decisions is impaired for reasons other than minority to the extent that the person lacks the ability to obtain the essential requirements for physical health or safety without court-ordered assistance;
- (9) "neglect" means the failure by the caretaker of an elderly person to provide services necessary to maintain the physical and mental health of the elderly person;
- (10) "physical harm" means injury to the person of an elderly person resulting from abuse, neglect or abandonment;
- (11) "police officer" has the meaning given in AS 18.65.290(2);
- (12) "protective services" means services intended to prevent or alleviate harm resulting from abuse, neglect, exploitation, or abandonment. (§ 2 ch 36 SLA 1983)

* * *

Sec. 12.45.047. Videotaping of testimony by young victims of sexual offenses. (a) Upon application by the prosecuting attorney and notice to the defendant, the court shall permit the state to videotape the testimony of a child who is the alleged victim of a violation of AS 11.41.410 — 11.41.455 and who is 16 years of age or younger at the time the court issues the order permitting the videotaping.

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(b) The trial judge shall preside at the videotaping proceeding and shall rule on all questions as if at trial. The defendant shall be afforded all rights applicable to defendants during trial, including the right to an attorney and the right to confront and cross-examine the witness. The trial judge shall determine those persons other than the prosecuting attorney, the defendant, and the defendant's attorney who may attend the videotaping proceeding.

(c) Videotaped evidence taken in accordance with this section is admissible in evidence in the criminal trial of a defendant charged with a violation of AS 11.41.410 — 11.41.455. (§ 2 ch 67 SLA 1982)

Editor's notes. — For provisions setting forth the policy of the state, the purposes of the enacting legislation, and legislative findings, see § 1, ch. 67, SLA 1982 in the 1982 Temporary and Special Acts and Resolves.

Section 3, ch. 67, SLA 1982, provides:

"AS 12.45.047 added by sec. 2 of this Act has the effect of changing Rule 804, Rules of Evidence, by adding the videotaped evidence of a young victim of a violation of AS 11.41.410 — 11.41.455 to the list of exceptions to the hearsay rule."

Sec. 12.45.048. Exclusion of public from trial during testimony by young victim of sexual offense. (a) After notice to the defendant, the state may apply to the court for an order excluding the public from the courtroom during the testimony of a child who is the alleged victim of a violation of AS 11.41.410 — 11.41.455. The order shall be granted if the court finds that the child is 16 years of age or younger at the time of the trial.

(b) If the public is excluded from the trial under (a) of this section, the testimony given during the time the public is excluded shall be available to the public upon request within a reasonable time sufficient to allow preparation of a tape recording or transcript of the testimony.

(c) In this section "public" means all persons except

- (1) the judge presiding over the trial;
- (2) the members of the jury;
- (3) the defendant and the attorney and an investigator for the defendant;
- (4) the prosecuting attorney and an investigating officer for the state;
- (5) the parents or legal guardians of the child;
- (6) a guardian ad litem or attorney for the child;
- (7) in the discretion of the court, an adult for whom the child has developed a significant emotional attachment who can provide emotional support for the child while the child testifies;
- (8) court personnel, including those essential for taking the testimony. (§ 2 ch 67 SLA 1982)

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Chapter 66. Council on Domestic Violence and Sexual Assault.

Section	Section
10. Council on domestic violence and sexual assault; purpose	40. Meetings and quorum
20. Membership, terms, vacancies, and disqualification	50. Duties of the council
30. Compensation and expenses	60. Qualifications
	900. Definitions

Sec. 18.66.010. Council on domestic violence and sexual assault; purpose. There is established in the Department of Public Safety the Council on Domestic Violence and Sexual Assault. The purpose of the council is to provide for planning and coordination of services to victims of domestic violence or sexual assault or to their families and to perpetrators of domestic violence and sexual assault and to provide for crisis intervention and prevention programs. (§ 1 ch 101 SLA 1981)

Sec. 18.66.020. Membership, terms, vacancies, and disqualification. (a) The council consists of

(1) three persons appointed by the governor after consultation with the Network on Domestic Violence and Sexual Assault, a nonprofit corporation; the Network on Domestic Violence and Sexual Assault shall submit a list to the governor of persons recommended for appointment;

(2) the commissioner of public safety or the designee of the commissioner of public safety; and

(3) the commissioner of health and social services or the designee of the commissioner of health and social services;

(4) the commissioner of education or the designee of the commissioner of education;

(5) the attorney general or the designee of the attorney general.

(b) The term of office of a member appointed under (a)(1) of this section is two years. A member appointed under (a)(1) of this section serves at the pleasure of the governor and may not serve more than two consecutive terms. A vacancy on the council shall be filled for the unexpired term by appointment by the governor after consultation with the Network on Domestic Violence.

(c) A person who receives compensation from or is an employee of a domestic violence, sexual assault, or crisis intervention or prevention program may not be appointed to the council. (§ 1 ch 101 SLA 1981)

Editor's notes. — Section 4, ch. 101, SLA 1981, provides: "Of the first members appointed to the Council on Domestic Violence and Sexual Assault under AS 18.66.020(a) added in sec. 1 of this act (1) one member shall be appointed to serve a term of one year; (2) two members shall be appointed to serve a term of two years."

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Sec. 18.66.030. Compensation and expenses. The members of the council receive no salary but are entitled to transportation expenses and per diem in accordance with AS 39.20.180. (§ 1 ch 101 SLA 1981)

Sec. 18.66.040. Meetings and quorum. The council shall meet at least four times a year. At least one meeting each year shall include a statewide public teleconference hearing. The time and place of a meeting shall be set by the presiding officer or by three members who submit a written request for a meeting to the presiding officer. Four members of the council constitute a quorum. (§ 1 ch 101 SLA 1981)

Sec. 18.66.050. Duties of the council. (a) The council shall

(1) hire an executive director and necessary staff;

(2) elect one of its members as presiding officer;

(3) in consultation with authorities in the field, develop, implement, maintain, and monitor domestic violence, sexual assault, and crisis intervention and prevention programs, including educational programs, films, and school curricula on the cause, prevention, and treatment of domestic violence and sexual assault;

(4) coordinate services provided by the Department of Law, the Department of Education, the Department of Public Safety, the Department of Health and Social Services, and other state agencies and community groups dealing with domestic violence, sexual assault, and crisis intervention and prevention, and provide technical assistance as requested by those state agencies and community groups;

(5) develop and implement a standardized data collection system on domestic violence, sexual assault, and crisis intervention and prevention;

(6) conduct public hearings and studies on issues relating to violence, including domestic violence and sexual assault, and on issues relating to the role of crisis intervention and prevention;

(7) receive and dispense state and federal money and award grants and contracts from appropriations for the purpose to qualified local community entities for domestic violence, sexual assault, and crisis intervention and prevention programs;

(8) oversee and audit domestic violence, sexual assault, and crisis intervention and prevention programs which receive money under this chapter;

(9) provide fiscal and technical assistance to plan, organize, implement and administer domestic violence, sexual assault, and crisis intervention and prevention programs;

(10) make an annual report to the governor and the legislature on the activities of the council, plans of the council for new services and programs, and concerns of the council, including recommendations for legislation necessary to carry out the purposes of this chapter;

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(11) adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) to carry out the purposes of this chapter and to protect the health, safety, well-being, and privacy of persons receiving services financed with grants or contracts under this chapter. (§ 1 ch 101 SLA 1981)

Sec. 18.66.060. Qualifications. A local community entity is qualified to receive a grant or contract under this chapter if it agrees to provide services approved by the council to victims of domestic violence or sexual assault or their families or to perpetrators of domestic violence or sexual assault without regard to ability to pay. (§ 1 ch 101 SLA 1981)

Sec. 18.66.900. Definitions. In this chapter:

(1) "council" means the Council on Domestic Violence and Sexual Assault;

(2) "crisis intervention and prevention program" means a community program that provides information, education, counseling, and referral services to individuals experiencing personal crisis related to domestic violence or sexual assault and to individuals in personal or professional transition, excluding correctional half-way houses, outpatient mental health programs, and drug or alcohol rehabilitation programs;

(3) "domestic violence" means a crime specified in AS 11.41 when the victim is a spouse or a former spouse of the defendant, or a member of the social unit comprised of those living together in the same dwelling as the defendant;

(4) "domestic violence program" means a program that provides services to the victims of domestic violence, their families, or perpetrators of domestic violence;

(5) "local community entity" means a city or borough or other political subdivision of the state, a nonprofit organization, or a combination of these;

(6) "sexual assault" means a crime specified in AS 11.41.410 — 11.41.450;

(7) "sexual assault program" means a program that provides services to the victims of sexual assault, their families, or perpetrators of sexual assault. (§ 1 ch 101 SLA 1981; am § 9 ch 78 SLA 1983)

Effect of amendments. — The 1983 11.51.130(a)(4)" from the end of paragraph amendment deleted "or AS (6).

* * *

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Article 6. Domestic Violence.

Section

510. Domestic violence training
520. Notification to victims of domestic violence

Sec. 18.65.510. Domestic violence training. (a) Each established police training program in the state shall provide training that acquaints police officers with

(1) laws relating to substantive crimes and rules of criminal procedure applicable in cases involving domestic violence;

(2) techniques for handling incidents of domestic violence which promote the safety of the victim and the officer and which reduce the likelihood of recurrence;

(3) organizations in the state that offer aid or shelter to victims of domestic violence;

(4) procedures applicable in the prosecution of cases involving domestic violence;

(5) orders that may be issued by a court under AS 25.35.010 and 25.35.020; and

(6) the notification to be given to victims of domestic violence under AS 18.65.520.

(b) In providing a training program under this section, each agency or institution offering an established police training program shall consult with interested individuals and organizations providing assistance to victims of domestic violence. (§ 3 ch 139 SLA 1980)

Revisor's notes. — Internal reference in (a)(5) was revised in 1983.

Sec. 18.65.520. Notification to victims of domestic violence. (a) During the course of responding to an offense involving domestic violence, a peace officer shall orally and in writing inform the victim of services available to the victim and the rights of the victim, substantially as follows:

As a victim of domestic violence you should be aware of the following:

(1) In some places in Alaska there are organizations that provide aid and shelter to victims of domestic violence. The nearest such organization is located at _____

(2) If you feel that there is a continuing danger to your safety, please let me know and I will make all possible efforts to insure your safety.

(3) Alaska law provides that you may file an application with the nearest court for a court order protecting you and your children from further harm. The forms to obtain the order are available at the court. It is not necessary to have an attorney to obtain a court order but one may be of help to you. If you cannot afford to hire an attorney, you should contact the nearest Alaska Legal Services office which is located at _____

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(4) Additionally, the victim/witness assistance program of the Department of Law may be able to help you. The nearest district attorney's office is located at _____

(b) If the victim of domestic violence does not understand English, the police officer shall make reasonable efforts to inform the victim of the services and rights specified in (a) of this section in a language the victim understands.

(c) As used in this section

(1) "domestic violence" means a crime under AS 11.41 when the victim is a spouse or a former spouse of the person who committed the crime, a member of the social unit comprised of those living together in the same dwelling as the person who committed the crime, or another person who is not a spouse or former spouse of the person who committed the crime but who previously lived in a spousal relationship with the person who committed the crime;

(2) "peace officer" means a person vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders. (§ 3 ch 139 SLA 1980; am §§ 14, 15 ch 61 SLA 1982)

* * *

Chapter 35. Domestic Violence.

Section	Section
10. Injunctive relief in cases involving domestic violence	40. Service of process
20. Emergency injunctive relief in cases involving domestic violence	50. Notification to law enforcement agencies
30. Forms for filing petition	60. Definitions

Cross references. — For domestic violence police training, see AS 18.65.510; for notification to victims of domestic violence, see AS 18.65.520.

Editor's notes. — Section 5, ch. 139, SLA 1980, provides: "Section 1 of this Act has the effect of changing Rule 3, Rules of Civil Procedure, by enacting a provision that allows a court to proceed upon the filing of a petition rather than a complaint, and Rule 76, Rules of Civil Procedure, by enacting a provision that allows a court to accept for filing petitions which are handwritten in part. Section 1 of this Act also has the effect of changing Rule 65,

Rules of Civil Procedure, by enacting a provision that establishes an alternate procedure for obtaining orders for relief from domestic violence."

Collateral references. — 6 Am. Jur. 2d, Assault and Battery, §§ 44, 109, 177, 181. 41 Am. Jur. 2d, Husband and Wife, § 11. 42 Am. Jur. 2d, Injunctions, §§ 23-68, 69, 80, 81, 83, 94.

41 C.J.S., Husband and Wife, § 396. 43 C.J.S., Injunctions, §§ 22-25, 146, 147, 161, 166 et seq.

Admissibility of expert or opinion testimony on battered wife or battered woman syndrome, 18 ALR4th 1153.

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Sec. 25.35.010. Injunctive relief in cases involving domestic violence. (a) A person who is subjected to domestic violence may petition a superior court for injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent.

(b) Upon receiving a petition under (a) of this section, the superior court shall schedule a hearing and shall provide at least 10 days notice to the respondent of the hearing and of the respondent's right to appear and to be heard either in person or by attorney. If, at the hearing, the superior court finds that the petitioner has been subjected to domestic violence by the respondent, the superior court may issue any order it determines to be necessary for the protection of the health, safety or welfare of the petitioner or of a minor child in the care of the petitioner. An order under this subsection may include provisions which

(1) restrain the respondent from subjecting the petitioner to domestic violence;

(2) direct the respondent to vacate the home of the petitioner;

(3) restrain the respondent from communicating directly or indirectly with the petitioner;

(4) direct the respondent to pay support for the petitioner or for a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or the child;

(5) award temporary custody of a minor child to the petitioner;

(6) direct the respondent to pay medical expenses incurred by the petitioner as a result of the domestic violence;

(7) direct the respondent to engage in personal or family counseling;

(8) restrain the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner.

(c) An order issued under this section remains in effect for a period of time not to exceed 90 days. However, the petitioner may petition the superior court for an extension of a provision of the order if the provision is described in (b)(1), (b)(2), (b)(3), (b)(7), or (b)(8) of this section. If the superior court, after notice to the respondent of and a hearing on the petition for the extension in accordance with the procedures described in (b) of this section, finds that an extension of the provision of the order is necessary to protect the petitioner or a minor child in the care of the petitioner from domestic violence, the superior court may extend the provision of the order for a period of time not to exceed 45 days. The court may not grant more than one extension under this subsection.

(d) Proceedings under this section do not preclude any other available civil or criminal remedies. (§ 1 ch 139 SLA 1980; am §§ 3, 4 ch 61 SLA 1982)

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Sec. 25.35.020. Emergency injunctive relief in cases involving domestic violence. (a) A person who has been subjected to domestic violence may petition the superior court for a temporary order providing for emergency injunctive relief restraining the infliction of further domestic violence against the petitioner by the respondent. If there is no superior court within 50 road miles of the residence of the person subjected to domestic violence, the person may petition the nearest district court for a temporary emergency injunctive relief order. If there is no district court within 50 road miles of the residence of the person subjected to domestic violence, the person may petition the nearest magistrate for a temporary emergency injunctive relief order. The district court or magistrate shall notify the superior court immediately upon issuance of an order granting emergency injunctive relief under this section.

(b) An order under this section may be granted without written or oral notice to the respondent if the court finds that the petitioner has been subjected to domestic violence and

(1) it clearly appears that there is a substantial likelihood of immediate danger from the respondent to the health, safety, or welfare of the petitioner or of a minor child in the care of the petitioner; and

(2) the petitioner or the petitioner's attorney certifies to the court in writing the efforts, if any, which have been made to provide notice to the respondent and the reasons supporting the claim that notice should not be required.

(c) An order issued under this section may include a provision described in AS 25.35.010(b). The order shall be endorsed with the date and hour of issuance, shall be filed in the clerk's office and entered in the records of the court, and shall state the reason that it was granted without notice. The order shall remain in effect for a period not to exceed 20 days, unless extended by the court for good cause. The reasons for the extension shall be entered in the records of the court.

(d) If an order under this section is granted without notice, a hearing before the superior court for injunctive relief under AS 25.35.010 shall be scheduled by the superior court at the earliest possible time consistent with the notice provisions of AS 25.35.010. If at the hearing the petitioner does not proceed with the petition for injunctive relief, the superior court shall dissolve the emergency injunctive relief order.

(e) On three days notice to the petitioner, or on shorter notice as the superior court may prescribe, the respondent may make a motion to the superior court for the dissolution or modification of an order for emergency injunctive relief under this section. The superior court shall hear and rule on the motion in an expeditious manner.

(f) Proceedings under this section do not preclude other available civil or criminal remedies. (§ 1 ch 139 SLA 1980; am §§ 5, 6 ch 61 SLA 1982)

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Sec. 25.35.030. Forms for filing petition. (a) The Alaska court system, in cooperation with interested persons and organizations, shall prepare forms and instructions for the use of persons seeking an order for relief under AS 25.35.010 or 25.35.020, including forms for waiving filing fees on the basis of indigency. The forms shall conform to the requirements of AS 25.35.010 and 25.35.020 and the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. The office of the clerk of each superior and district court shall make the forms and instructions available to the public.

(b) [Repealed, § 16 ch 61 SLA 1982.] (§ 1 ch 139 SLA 1980; am § 16 ch 61 SLA 1982)

Sec. 25.35.040. Service of process. Process issued under AS 25.35.010 or 25.35.020 shall be promptly served and executed. If a state peace officer is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process issued under AS 25.35.010 or 25.35.020. A peace officer shall use every reasonable means to serve process issued under AS 25.35.010 or 25.35.020. (§ 7 ch 61 SLA 1982)

Revisor's notes. — Formerly AS 09.55.625. Renumbered in 1983.

Sec. 25.35.050. Notification to law enforcement agencies. If a superior court, district court, or magistrate issues an order under AS 25.35.010 or 25.35.020 restraining a respondent from subjecting a petitioner to domestic violence, the superior court, district court, or magistrate shall transmit a copy of the order to the appropriate local law enforcement agency. Each law enforcement agency shall establish procedures to inform their peace officers of copies of the orders received by the law enforcement agency under this section. Peace officers shall use every reasonable means to enforce an order issued under AS 25.35.010 or 25.35.020. (§ 1 ch 139 SLA 1980)

Sec. 25.35.060. Definitions. In this chapter, "domestic violence" means a crime under AS 11.41 when the victim is a spouse or a former spouse of the respondent, a member of the social unit comprised of those living together in the same dwelling as the respondent, or a person who is not a spouse or former spouse of the respondent but who previously lived in a spousal relationship with the respondent. (§ 1 ch 139 SLA 1980; am § 8 ch 61 SLA 1982)

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	13-803(A) (fine may be allocated to restitution)
2.2 Mandatory Condition of Probation	13-901(A),(H)
2.3 Mandatory Condition of Parole	31-412(C)
2.4 Mandatory Sentence	13-603(C)
2.5 Administration/Enforcement	13-806
3. Escrow and Forfeiture of Offender Profits	13-4201 et seq.
4. Witness Fees	13-4077 (expenses of indigent witness)
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	13-2802, 13-2804
6.2 Protective Orders	41-196 (protection of government witnesses)
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	12-253(4)
7.7 of Parole Hearing	31-411(F)
7.8 of Release of Offender	36-541.01(B) (prior to release of mental patient)
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	12-253(4); 13-702(D)(9), 13-702(F)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	13-702(F)
8.4 Written Statement at Parole Hearing	31-411(F)
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	13-3941
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	46-452(A)(1),(2)
12.4 Abuse, Neglect, Exploitation - Protective Services	46-451(A)(5), 46-452
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	12-2312
14. Domestic Violence	
14.1 Protective Orders	13-3601, 13-3602
14.2 Domestic Violence Shelters	36-3001 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	36-3007 (by domestic violence shelters)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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Arizona Revised Statutes Annotated

§ 13-603. Authorized disposition of offenders

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the victim of the crime or to the immediate family of the victim if the victim has died, in such an amount and manner as the court may order after consideration of the economic loss to the victim and economic circumstances of the convicted person.

* * *

§ 13-803. Restitution for offense causing death, physical injury or economic loss; fine for reimbursement of public monies

A. Upon a defendant's conviction for an offense resulting in the death, physical injury or economic loss of the victim, the court may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant.

B. If the court does not have sufficient evidence to support a finding of the amount of restitution in subsection A of this section, it may conduct a hearing upon the issue according to procedures established by rule of court.

C. If a defendant is sentenced to pay a fine, payment and enforcement of restitution shall take priority over payment to the state.

D. Subsections A through C of this section shall not apply to traffic offenses, except for a violation of § 28-661, 28-692, 28-692.01, 28-692.02, 28-693 or any local ordinance relating to the same subject matter of such sections.

E. The court may impose an additional fine upon sentencing for any offense to require that the defendant reimburse the law enforcement agency for any public monies paid to any person.

Amended by Laws 1981, Ch. 264, § 4, eff. Sept. 1, 1981.

For conditional enactment provision of Laws 1981, Ch. 264 and information as to occurrence of the condition, see note preceding § 13-3401.

been adjudicated guilty, nor agreed to pay restitution was erroneous. State v. Monick (App.1980) 125 Ariz. 593, 611 P.2d 946.

Notes of Decisions

1. In general

Order of restitution to victim of unrelated crime to which the defendant had neither admitted guilt.

§ 13-804. Fines against enterprises

A. A sentence to pay a fine, imposed on an enterprise for an offense defined in this title, or for an offense defined outside this title for which no special enterprise fine is specified, shall be a sentence to pay an amount, fixed by the court, of not more than:

1. For a felony, one million dollars.
2. For a class 1 misdemeanor, twenty thousand dollars.
3. For a class 2 misdemeanor, ten thousand dollars.
4. For a class 3 misdemeanor, two thousand dollars.
5. For a petty offense, one thousand dollars.

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B. A judgment that the enterprise shall pay a fine shall constitute a lien in like manner as a judgment for money rendered in a civil action.

Amended by Laws 1980, Ch. 229, § 9; eff. April 23, 1980.

Notes of Decisions

1. Waste

Arizona has sufficient legal authority to qualify for Phase I of Interim Authorization under the

Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901 to 6987. Op. Atty. Gen. No. 180-143.

§ 13-806. Consequences of nonpayment of fines or restitution

A. If a defendant sentenced to pay a fine or restitution defaults in the payment of such fine or restitution or of any installment, the clerk of the court imposing the fine or restitution shall notify the prosecutor and the sentencing court. The court on motion of the prosecuting attorney or on its own motion may require the defendant to show, cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for his appearance. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or an intentional refusal on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that the default constitutes contempt and may order the defendant incarcerated in the county jail until the fine or restitution, or a specified part of the fine or restitution, is paid.

B. If a fine or restitution is imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay it from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A.

C. The term of imprisonment on contempt for nonpayment of a fine or restitution shall be specified in the order of commitment and shall not exceed one day for each ten dollars of the fine or restitution, thirty days if the fine or restitution was imposed upon conviction of a misdemeanor or six months in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or restitution shall be given credit toward payment for each day of imprisonment at the rate specified in the order of commitment.

* * *

CHAPTER 9.—PROBATION AND RESTORATION OF CIVIL RIGHTS

Cross References

Delinquent children, disposition and commitment, see § 8-241 et seq.

§ 13-901. Probation

A. If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and, if so, shall without delay place such person on supervised or unsupervised probation upon such terms and conditions as the court deems appropriate. If a person is not eligible for probation, imposition or execution of sentence shall not be suspended or delayed. If the court imposes probation, it may also impose a fine as authorized by chapter 8 of this title.¹ If probation is granted the court shall impose a condition that the person waive extradition for any probation revocation procedures and it shall order restitution pursuant to § 13-603, subsection C where there is a victim who has suffered economic loss. When granting probation to an adult, the

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superior court shall inquire into the ability of the probationer to pay a fee. If the superior court is satisfied that the probationer can pay a fee, the court shall, as a condition of probation, assess a monthly fee in an amount that the probationer can bear, payable to the clerk of the superior court. The clerk of the court shall pay all monies collected from this fee to the county treasurer for deposit in the probation services fund.

B. The period of probation shall be determined according to § 13-902.

C. The court may in its discretion issue a warrant for the rearrest of the defendant and may modify or add to the conditions or, if the defendant commits an additional offense or violates a condition, revoke probation in accordance with the rules of criminal procedure at any time prior to the expiration or termination of the period of probation.

H. When restitution is made a condition of probation, the court shall fix the amount thereof and the manner of performance. If the record does not contain sufficient evidence to support a finding of the amount, the court may conduct a hearing upon the issue, according to procedures established by rule of court.

I. When granting probation, the court shall set forth at the time of sentencing and on the record the factual and legal reasons in support of each sentence.

* * *

§ 31-412. Criterion for release on parole; release; custody of parolee

A. If a prisoner is certified as eligible for parole pursuant to the provisions of § 41-1604.06 the board of pardons and paroles shall authorize the release of the applicant upon parole if the applicant has reached his earliest parole eligibility date pursuant to § 41-1604.06, subsection D, unless it appears to the board, in their sole discretion, that there is a substantial probability that the applicant will not remain at liberty without violating the law. The applicant shall thereupon be allowed to go upon parole in the legal custody and under control of the department of corrections, until expiration of the term specified in his sentence or until his absolute discharge.

B. Notwithstanding the provisions of subsection A of this section, any prisoner, regardless of the classification of such prisoner, who has served a term of imprisonment pursuant to § 41-1604.06, subsection D, unless an increased term has been imposed pursuant to § 41-1604.06, subsection F, and then, in accordance with such subsection, may be certified by the director as eligible for parole for the sole purpose of parole to the custody of any other jurisdiction to serve a term of imprisonment imposed by such jurisdiction or parole to the custody of the department of corrections to serve any consecutive term imposed on such prisoner. Upon review of an application for parole pursuant to the provisions of this subsection the board may authorize such parole if, in its discretion, such parole appears to be in the best interests of the state.

C. The board shall as a condition of parole order a prisoner to make any court-ordered restitution. Restitution shall be ordered to be made to the victim or to the immediate family of the victim if the victim has died.

D. Payment of restitution by the prisoner in accordance with the provisions of subsection C of this section shall be made through the clerk of the superior court in the county in which the prisoner was sentenced for the offense for which he has been imprisoned in the same manner as restitution is paid as a condition of probation. The clerk of the superior court shall report to the board monthly whether or not restitution has been paid for that month by the prisoner.

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ARTICLE 27. CRIME VICTIM ACCOUNTS

Article 27, consisting of §§ 13-4201 and 13-4202, was added by Laws 1978, Ch. 215, § 3, effective October 1, 1978.

For disposition of the subject matter of sections of the former Criminal Code and derivation of sections of the revised Criminal Code, see Tables at the front of this volume.

§ 13-4201. Definitions

In this article, unless the context otherwise requires:

1. "Accused" means a person who has been arrested for a felony committed in the state of Arizona and either has been bound over for trial pursuant to a finding by a magistrate during a preliminary hearing of probable cause or has waived such a preliminary hearing or who has been lawfully indicted.

2. "Commission" means the state industrial commission.

3. "Person" means a person as defined in § 13-105, paragraph 18 and includes a representative or assignee of such person.

4. "Victim" means any person, including the surviving dependent of a person, who has suffered physical injury or pecuniary loss resulting from the crime of the accused.

Added Laws 1978, Ch. 215, § 3, eff. Oct. 1, 1978.

Historical Note

For effective date provision of Laws 1978, Ch. 215, see Historical Note following § 13-1206.

Library References

Words and Phrases (Perm.Ed.)

§ 13-4202. Void contracts; crime victim accounts; establishment; notice to victims; exceptions; civil liability

A. Every contract whether written or oral, express or implied, with an accused with respect to the reenactment of a crime by movie, book, article, radio or television presentation, live entertainment or expression of thoughts, feelings, opinions or emotions, is contrary to public policy and void unless the contract provides for payment to the commission of any monies which would be paid to the accused for such information or rights.

B. The commission shall deposit the monies received pursuant to subsection A from the contracts or agreements of each accused, for

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each crime committed by the accused, in a separate account designated as a crime victim account. The money shall be distributed to any victim of the crime committed by the accused if both of the following apply:

1. The accused is convicted of the crime.
2. The victim, within five years after the date of establishment of the account, is awarded a money judgment in a civil action against the accused for loss resulting from such crime. The account money shall be distributed by the commission to satisfy such judgment.

C. The commission, at least once every year for five years from the date of receipt of monies pursuant to subsection B, shall publish a legal notice in a newspaper of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising all victims for which monies have been received that funds are available to satisfy money judgments pursuant to this section. Such notice shall identify the accused, describe the criminal act involved and the proceedings against the accused and state the procedure to be followed for recovery of monies pursuant to subsection B. No reference to the identity of the victim shall be made. The commission may, in its discretion, provide for such additional notice as it deems necessary.

D. Upon disposition of charges favorable to an accused, the commission shall immediately pay any monies in the account owing to such person.

E. After five years have elapsed following the establishment of the account pursuant to subsection B and upon a showing that no actions are pending against the accused pursuant to this section, the commission shall immediately pay any monies in the account to the state general fund.

F. For purposes of this section, a person found not guilty by reason of insanity pursuant to Rule 23.2, Arizona Rules of Criminal Procedure, shall be deemed to be a convicted person.

G. Whenever it is found, pursuant to Rule 11, Arizona Rules of Criminal Procedure, that a person accused of a crime is unfit to proceed as a result of mental illness or defect because such person lacks capacity to understand the proceedings against him or to assist in his own defense, the commission shall bring an action of interpleader pursuant to Rule 22, Arizona Rules of Civil Procedure, to determine disposition of the escrow account.

H. Notwithstanding any inconsistent provision of law or of the Rules of Civil Procedure with respect to the timely bringing of an action, the five-year period provided for in subsection B shall not begin to run until an account has been established.

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I. Notwithstanding subsections B through F the commission shall make payments from the account to any accused upon the order of a court of competent jurisdiction after a showing by the accused that the money will be used for the sole purpose of retaining legal representation at any stage of proceedings against such accused.

J. An action taken by any person, whether by execution of a power of attorney, creation of a corporate entity or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

K. The cost of administering to the account and the monies therein shall be reimbursed to the industrial commission from the account.

L. Any person entering into a contract described in subsection A of this section which does not comply with this section shall be liable to the state for deposit in the crime victim account an amount equal to all monies paid or received including monies paid to or received by another person by execution of a power of attorney, creation of a corporate entity or otherwise done to defeat the purposes of this section. Added Laws 1978, Ch. 215, § 3, eff. Oct. 1, 1978.

* * *

§ 13-4077. Allowance of expenses of indigent witness

When a person attends before a magistrate, grand jury or court as a witness upon a subpoena or in pursuance of an undertaking, and it appears that he has come from a place without the county, or that he is poor and unable to pay the expenses of his attendance, the superior court, if the attendance of the witness is upon a trial, by an order upon its minutes, or, in any other case, the judge, by a written order, may direct the treasurer of the county to pay the witness a reasonable amount to be specified in the order for his expenses.

Formerly § 13-1828. Renumbered as § 13-4077 by Laws 1977, Ch. 142, § 166, eff. Oct. 1, 1978.

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CHAPTER 28

INTERFERENCE WITH JUDICIAL AND OTHER PROCEEDINGS

Sec.

- 13-2801. Definitions.
- 13-2802. Influencing a witness; classification.
- 13-2803. Receiving a bribe by a witness; classification.
- 13-2804. Tampering with a witness; classification.
- 13-2805. Influencing a juror; classification.
- 13-2806. Receiving a bribe by a juror; classification.
- 13-2807. Jury tampering; classification.
- 13-2808. Misconduct by a juror; classification.
- 13-2809. Tampering with physical evidence; classification.
- 13-2810. Interfering with judicial proceedings; classification.
- 13-2811. Repealed.
- 13-2812. Unlawful grand jury disclosure; classification.
- 13-2813. Unlawful disclosure or an indictment, information or complaint; classification.
- 13-2814. Simulating legal process; classification.

Chapter 28, consisting of §§ 13-2801 to 13-2814, was added by Laws 1977, Ch. 142, § 90, effective October 1, 1978.

For disposition of the subject matter of sections of the former Criminal Code and derivation of sections of the revised Criminal Code, see Tables at the front of this volume.

Cross References

Classification of offenses, see § 13-601 et seq.
Fines, see § 13-801 et seq.
Sentencing, imprisonment, see § 13-701 et seq.

Law Review Commentaries

Criminal Code revision. 13 Ariz.Bar J. No. 2, p. 14 (1977). Interference with judicial and other proceedings. Ariz.State L.J. 3, 1977, p. 529.

§ 13-2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Juror" means any person who is a member of any impaneled jury or grand jury, and includes any person who has been drawn or summoned to attend as a prospective juror.
2. "Official proceeding" means a proceeding heard before any legislative, judicial, administrative or other governmental agency or official authorized to hear evidence under oath.

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3. "Physical evidence" means any article, object, document, record or other thing of physical substance.

4. "Testimony" means oral or written statements, documents or any other material that may be offered by a witness in an official proceeding.

5. "Threat" means a threat proscribed by § 13-1804, subsection A. Added Laws 1977, Ch. 142, § 90, eff. Oct. 1, 1978.

Library References

Obstructing Justice ⇨ 1.

C.J.S. Obstructing Justice § 12.

§ 13-2802. Influencing a witness; classification

A. A person commits influencing a witness if such person threatens a witness or offers, confers or agrees to confer any benefit upon a witness in any official proceeding or a person he believes may be called as a witness with intent to:

1. Influence the testimony of that person; or
2. Induce that person to avoid legal process summoning him to testify; or
3. Induce that person to absent himself from any official proceeding to which he has been legally summoned.

B. Influencing a witness is a class 5 felony.
Added Laws 1977, Ch. 142, § 90, eff. Oct. 1, 1978.

§ 13-2804. Tampering with a witness; classification

A. A person commits tampering with a witness if such person knowingly induces a witness in any official proceeding or a person he believes may be called as a witness to:

1. Unlawfully withhold any testimony; or
2. Testify falsely; or
3. Absent himself from any official proceeding to which he has been legally summoned.

B. Tampering with a witness is a class 6 felony.
Added Laws 1977, Ch. 142, § 90, eff. Oct. 1, 1978.

* * *

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§ 41-196. Witness protection

A. The director of the department of public safety with the concurrence of the attorney general may upon the director's own initiative or at the request of any county attorney or law enforcement agency provide for the security of government witnesses, potential government witnesses and their immediate families in official criminal or civil proceedings instituted or investigations pending against a person alleged to have engaged in a violation of the law. Providing for this security of witnesses may include provision of housing facilities and for the health, safety and welfare of such witnesses and their immediate families, if testimony by such a witness might subject the witness or a member of his immediate family to a danger of bodily injury, and may continue so long as such danger exists. The director of the department of public safety with the concurrence of the attorney general may authorize the purchase, rental or modification of protected housing facilities for the purpose of this section. He may also with the concurrence of the attorney general contract with any government or department of government to obtain or to provide the facilities or services to carry out this section. Any appropriation for witness protection shall be made to and administered by the department of public safety.

B. The offer of protection to a person may be conditioned by the director of the department of public safety upon reimbursement in whole or part to the state by a government of the cost of maintaining and protecting such person.

* * *

§ 12-253. Powers and duties

The adult probation officer shall:

1. Make and file a complete record of persons placed under suspended sentence by the court, and of all reports made to him in writing or in person, in accordance with the conditions imposed by the court.
2. Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court.
3. Serve warrants, make arrests and bring persons before the court who are under suspended sentences. Such officer has the authority of a peace officer in the performance of his duties.
4. Investigate cases referred to him for investigation by the court in which he is serving and report thereon to the court. In an investigation for a presentence report, the adult probation officer shall promptly inquire into the circumstances of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, personal habits, the physical, emotional and financial impact of the offense on the victim and the emotional and financial impact of the offense on the immediate family of the victim. The adult probation officer shall also notify the victim or the immediate family of the victim of the right to appear personally or by counsel at any aggravation or mitigation proceeding.

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ARTICLE 2. PAROLES

For termination under Sunset Law, see italic note preceding § 31-401.

Law Review Commentaries

Corrections in Arizona future. 13 Ariz.Bar J. No. 4, p. 49 (1977).

§ 31-411. Parole or discharge; conditions of parole; release under supervision of department of corrections; notice of hearing; exceptions

A. Any prisoner who has been certified as eligible for parole or absolute discharge pursuant to the provisions of § 41-1604.06 or § 31-412, subsection B shall be given an opportunity to apply for release upon parole or for an absolute discharge. The board of pardons and paroles shall not entertain any other form of application or petition for the release upon parole or absolute discharge of any prisoner.

F. The board, when a commutation or parole is to be considered, shall, before holding a hearing on the commutation or parole, notify the attorney general, the presiding judge of the superior court, the county attorney in the county in which the prisoner requesting a commutation or parole was sentenced, and the victim of the offense for which the prisoner is incarcerated or the family of the victim if the victim died as a result of the prisoner's conduct. The notice to the victim or victim's immediate family shall be mailed to the last known address. The notice shall state the name of the prisoner requesting the commutation or parole and shall set the date of hearing on the application. The notice to the victim or the victim's immediate family shall also inform them of their right to submit a written report to the board expressing their opinion concerning the release of the prisoner. No hearing concerning commutations or parole shall be held until thirty days after the date of giving the notice.

G. The provisions of this section requiring notice to the officials named in subsection F of this section shall not apply:

1. When there is imminent danger of the death of the person convicted or imprisoned.
2. When the term of imprisonment of the applicant is within two hundred ten days of expiration.

Amended by Laws 1977, Ch. 142, § 183, eff. Oct. 1, 1978; Laws 1978, Ch. 164, § 14, eff. Oct. 1, 1978; Laws 1982, Ch. 254, § 3; Laws 1982, Ch. 325, § 6; Laws 1983, Ch. 123, § 2.

* * *

§ 36-541.01. Release or discharge from treatment prior to expiration of period ordered by court; notification of intent to release or discharge; hearing

A. A patient ordered to undergo treatment pursuant to this article may be released from treatment prior to the expiration of the period ordered by the court if, in the opinion of the medical director of the mental health treatment agency, the patient no longer is, as a result of a mental disorder, a danger to others, a danger to self or gravely disabled. No person ordered to undergo treatment as a danger to others may be released or discharged from treatment prior to the expiration of the period for treatment ordered by the court unless the medical director first gives notice of intention to do so as provided by this section.

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B. Prior to the release or discharge of a patient ordered to undergo treatment as a danger to others, the medical director of the mental health treatment agency shall give notice of his intention to release or discharge the patient. Notice shall be given to the presiding judge of the court which entered the order for treatment, any relative or victim of the patient who has filed a demand for notice with the treatment agency and any person found by the court to have a legitimate reason for receiving such notice.

C. If the director of the mental health treatment agency is unable to determine, based upon the information submitted pursuant to subsection D, that a person who has filed a demand for notice is a victim he shall inform such person that their demand for notice is denied and that notice will not be given unless ordered by the court pursuant to subsection E.

D. A demand for notice by a relative or victim, and a petition for notice by other persons, shall be on a form prescribed by the department and shall include the following information:

1. The full name of the person to receive notice.
2. The address to which notice is to be mailed.
3. The telephone number of the person to receive notice.
4. The relationship to the patient, if any, or the reasons why the person believes he has a legitimate reason to receive notice.
5. A statement that the person will advise the treatment agency in writing by certified mail, return receipt requested, of any change in the address to which notice is to be mailed.
6. The full name of the patient ordered to undergo treatment as a danger to others.
7. The mental health number assigned to the case by the superior court.

E. If the court receives a demand for notice by a relative or victim, the court shall order the medical director of the mental health treatment agency not to release or discharge the patient before the expiration of the period of court-ordered treatment without first giving notice to the relative or victim as provided in subsection F. After considering a petition for notice, if the court finds that the petitioner has a legitimate reason for receiving prior notice, the court may order the medical director of the mental health treatment agency not to release or discharge the patient from inpatient treatment before the expiration of the period of court-ordered treatment without first giving notice to the petitioner as provided in subsection F. Any order for notice shall be delivered to the mental health treatment agency and shall be filed with the patient's clinical record. If the patient is transferred to another agency or institution, any orders for notice shall be transferred with the patient.

F. A notice of intention to release or discharge shall include the following information:

1. The name of patient to be released or discharged.
2. The type of release or discharge.
3. The date of anticipated release or discharge.

Notices shall be placed in the mail, postage prepaid and addressed to the court and to each person for whom notice has been ordered, at least ten days before the date of intended release or discharge. For purposes of computing the ten-day notice requirement, the day of mailing shall not be counted.

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G. Any person for whom prior notice is required pursuant to this section, or the court, may make a motion within the ten-day notification period which requires the court to determine whether the standard for release of the patient prior to the expiration of the period for court-ordered treatment has been met. A determination that the standard for release has been met may be made by the court based on a review of the record and any affidavits submitted without further hearing. For good cause, the court may order an evidentiary hearing. Whether or not a hearing is held, the court shall make a determination at the earliest possible time but no longer than three weeks after the anticipated date of release pursuant to subsection F, and the patient shall be retained for the additional time required for the court's determination. In making its determination the court may order an independent examination of the patient. If no motion is made, the patient may be released in accordance with the terms set forth in the notice without further court order.

* * *

§ 13-702. Sentencing

D. For the purpose of determining the sentence pursuant to subsections A and B of this section, the court shall consider the following aggravating circumstances:

9. The physical, emotional and financial harm caused to the victim or, if the victim has died as a result of the conduct of the defendant, the emotional and financial harm caused to the victim's immediate family.

F. The victim of any felony or the immediate family of the victim if the victim has died as a result of the conduct of the defendant may appear personally or by counsel at any aggravation or mitigation proceeding to present evidence and express opinions concerning the crime, the defendant or the need for restitution. The court in imposing sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in the presentence report.

* * *

§ 13-3941. Disposition and return of stolen or embezzled property

A. When property alleged to have been stolen or embezzled comes into the custody of a peace officer or of a magistrate, he shall hold it subject to the order of the magistrate before whom the complaint is laid or who examines the charge against the person accused of stealing or embezzling such property.

B. The person to whom the property is delivered shall enter in a suitable book a description of every article of property alleged to be stolen or embezzled and brought into the office, or taken from the person of a prisoner, and shall attach a number to each article and make a corresponding entry thereof.

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C. The magistrate shall, upon satisfactory proof of the ownership, order the property to be delivered to the owner. The order entitles the owner to demand and receive the property unless the property, or any part thereof, is required as evidence in any criminal action. If it is so required, it shall remain in possession of the officer or magistrate until the termination of the action.

D. If the property has not been delivered to the owner, the court before which a trial is had for the theft or embezzlement of the property may, on proof of title of the owner, order it restored to him.

E. No charge or fee may be imposed upon the owner of property ordered to be returned to him pursuant to this section.

* * *

CHAPTER 4—ADULT PROTECTIVE SERVICES

ARTICLE 1. GENERAL PROVISIONS

Sec. 46-451. Definitions; program goals.	Sec. 46-453. Immunity of participants; nonprivileged communications.
46-452. Protective services worker; powers and duties.	

Chapter 4, consisting of §§ 46-451 and 46-452, was added by Laws 1980, Ch. 127, § 2, effective July 31, 1980.

Former Chapter 4, consisting of §§ 46-501 to 46-503, was repealed by Laws 1973, Ch. 158, § 317, effective August 8, 1973, and Laws 1975, Ch. 21, § 2, effective May 12, 1975.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of §§ 46-451 and 46-452 was added by Laws 1980, Ch. 127, § 2, effective July 31, 1980.

Cross References

Workers and special visitation warrants, see § 14-5310.01.

§ 46-451. Definitions; program goals

A. In this chapter, unless the context otherwise requires:

1. "Abuse" means:
 - (a) Intentional infliction of physical harm.
 - (b) Injury caused by negligent acts or omissions.
 - (c) Unreasonable confinement.

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2. "Exploitation" means the illegal or improper use of an incapacitated adult or his resources for another's profit or advantage.

3. "Incapacity" means an impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

4. "Neglect" means a pattern of conduct resulting in deprivation of services necessary to maintain minimum physical and mental health.

5. "Protective services" means a program of identifiable and specialized social services that may offer social services appropriate to resolve problems which have produced visible signs of incapacitation and abuse, exploitation or neglect.

6. "Protective services worker" means a person who has been selected by and trained under the requirements prescribed by the department to provide protective services.

B. Protective services programs shall seek to maintain the adult in his familiar environment by strengthening his capacity for self-maintenance or by providing supportive services.

Added by Laws 1980, Ch. 127, § 2.

Laws 1980, Ch. 127, § 3 provides: "Notwithstanding the provisions of this act, the legislature intends that if the provisions of title 41, chapter 20 [§ 41-2351 et seq.], Arizona Revised Statutes, operate to terminate an agency, any provisions regarding powers, duties, functions or personnel added or amended by this act terminate on the date of termination of the particular agency."

after "Definitions". In subsection A, paragraphs 4, 5, 6 and 7 were renumbered as paragraphs 3, 4, 5 and 6.

Library References

States — 45.
C.J.S. States §§ 79, 80, 82, 136.

1980 Reviser's Note:

Pursuant to authority of section 41-1304.02, in the section heading "; program goals" was added

§ 46-452. Protective services worker; powers and duties

A. A protective services worker shall:

1. Receive reports of incapacitated and abused, exploited or neglected adults.
2. Receive from any source oral or written information regarding an adult who may be in need of protective services.
3. Upon receipt of such information make an evaluation to determine if the adult is in need of protective services and what services, if any, are needed.
4. Offer an adult in need of protective services or his guardian whatever services appear appropriate in view of the evaluation.
5. File petitions as necessary for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator or make application for a special visitation warrant as provided for in title 14, chapter 5.¹

B. The department or a protective services worker employed by the department may not be appointed as guardian, conservator or temporary guardian.

C. An adult protective services worker is immune from civil liability for applying for a special visitation warrant or for filing a petition for guardianship or conservatorship unless the application or filing is done in bad faith.

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§ 46-453. Immunity of participants; nonprivileged communications

A. Any person making a complaint or providing information or otherwise participating in the program authorized by this chapter is immune from any civil or criminal liability by reason of such action, unless the person acted with malice or unless such person has been charged with or is suspected of incapacitating, abusing, exploiting or neglecting the adult in question.

B. In any civil or criminal litigation in which incapacitation, abuse, exploitation or neglect of an adult is an issue, a clergyman or priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a clergyman or a priest in the course of the discipline enjoined by the church to which he belongs. Added by Laws 1983, Ch. 319, § 1.

§§ 46-501, 46-502. Repealed by Laws 1973, Ch. 158, § 317

The repealed sections, added by Laws 1961, Ch. 109, § 2, related to the State board of crippled children's services. 46-501 Laws 1972, Ch. 163, § 59. 46-502 Laws 1969, Ch. 127, § 1; Laws 1970, Ch. 204, § 201.

Prior to repeal the sections were amended as follows: See, now, § 36-261 et seq.

§ 46-503. Repealed by Laws 1975, Ch. 21, § 2, eff. May 12, 1975

This section was derived from Laws 1969, Ch. 127, § 2; Laws 1970, Ch. 204, § 202; Laws 1973, Ch. 9, § 4; and Laws 1973, Ch. 158, § 316 and related to the state board of crippled children's services. See, now, § 36-261 et seq.

* * *

ARTICLE 9. TESTIMONY IN CERTAIN ACTIONS INVOLVING MINORS

Article 9, consisting of §§ 12-2311 and 12-2312, was added by Laws 1978, Ch. 89, § 1, effective September 3, 1978.

§ 12-2311. Applicability

This article applies in all civil and criminal court proceedings involving an alleged sexual offense prescribed by title 13, chapter 14 involving a minor under fifteen years of age.

§ 12-2312. Videotaping of testimony

Upon request of either party, the court may order all questioning of a minor witness to be videotaped in the judge's chambers in the presence of the defendant, defendant's counsel, the prosecuting attorney or plaintiff and plaintiff's counsel as the case may be and the court for presentation to the jury as evidence at such time as the court determines is proper.

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§ 13-3601. Domestic violence; classification; sentencing option; arrest and procedure for violation; notice; report; diversion

A. "Domestic violence" means any act which is an offense defined in §§ 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504, 13-1602 and 13-2904, subsection A, paragraphs 1, 2, 3 and 6, if the relationship between the victim and the defendant is one of marriage or former marriage.

B. A peace officer may, with or without a warrant, arrest a person if he has probable cause to believe that domestic violence has been committed and he has probable cause to believe that the person to be arrested has committed the offense, whether such offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. The release procedures available under § 13-3883, paragraph 4 and § 13-3903 are not applicable to arrests made pursuant to this subsection.

C. A person arrested pursuant to subsection B of this section may be released from custody in accordance with the rules of criminal procedure or other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.

D. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform any alleged or potential victim of the procedures and resources available for the protection of such victim, including:

1. An order of protection pursuant to § 13-3602 and an injunction pursuant to § 25-315.
2. Emergency telephone number for the local police agency.
3. Telephone numbers for emergency services in the local community.

E. A peace officer is not civilly liable for noncompliance with subsection D.

F. An offense included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified.

G. If the defendant is found guilty of an offense included in domestic violence and if probation is otherwise available for such offense, the court may, without entering a judgment of guilt and with the concurrence of the prosecutor and consent of the defendant, defer further proceedings and place the defendant on probation as provided in this subsection. The terms and conditions of probation shall include those necessary to provide for the protection of the alleged victim and other specifically designated persons and additional conditions and requirements which the court deems appropriate, including any counseling or diversionary programs available to the defendant. On violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided for revocation of probation. On fulfillment of the terms and conditions of probation, the court shall discharge the defendant and dismiss the proceedings against the defendant. This subsection does not apply in any case in which the defendant has previously been found guilty under this section, or in which charges under this section have previously been dismissed in accordance with this subsection.

Added by Laws 1980, Ch. 113, § 1.

Library References

Husband and Wife § 3(2).
C.J.S. Husband and Wife § 13.

§ 13-3602. Order of protection; procedure; contents; arrest for violation; penalty

A. A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence.

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B. The petition shall state the:

1. Name and address of the plaintiff for purposes of service.
2. Name and address, if known, of the defendant.
3. Specific statement, including dates, of the domestic violence alleged.
4. Relationship between the parties pursuant to § 13-3601, subsection A and whether there is pending between the parties an action for annulment, legal separation, or dissolution of marriage.
5. Name of the court in which any prior or pending proceeding or order concerning the conduct which is sought to be restrained.
6. Desired relief.

The amount and payment of filing fees for a petition filed under this section is the same as in other civil actions. Filing fees and fees for service of process may be deferred or waived under any rule, statute or other law applicable to civil actions. Each court shall provide, without charge, forms for purposes of this section for assisting parties without counsel.

C. The court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff to determine whether the orders requested should issue without further hearing. If the court determines that there is reasonable cause to believe that the defendant may commit an act of domestic violence or that the defendant has committed an act of domestic violence, the court shall issue an order as provided for in subsection D of this section. If the court denies the requested relief, it may schedule a further hearing within ten days, with reasonable notice to the defendant.

D. An order of protection issued by a court may include any of the following:

1. Either or both parties may be enjoined from committing a violation of one or more of the offenses included in domestic violence.
2. One party may be granted the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result.
3. Either or both parties may be restrained from coming near the residence, place of employment or school of the other party or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.
4. Relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.

E. At any time during the period during which the order is in effect, the defendant is entitled to a hearing on written request. A hearing requested by a defendant shall be held within ten days from the date requested unless the court finds compelling reasons to continue the hearing. The hearing shall be held at the earliest possible time. An ex parte order issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, revoke or continue the order.

F. The order shall include the following statement:

"Warning"

This is an official court order. If you disobey this order the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order."

G. An order shall be served on the defendant. An order is effective immediately on the plaintiff. An order is effective on the defendant on service of a copy of the order. An order expires, unless renewed, six months after service on the defendant.

H. Within twenty-four hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the court from which the order was issued

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shall register a certified copy of the order of protection and a copy of the affidavit of service of process of acceptance of service with the sheriff's office in the county in which the plaintiff resides. Registration of an order means that a certified copy of the order of protection and a copy of the affidavit or acceptance of service have been received by the sheriff's office. The sheriff shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its registration, and for enforcement purposes pursuant to § 13-2810, a certified copy of an order of the court, whether or not registered, is presumed to be a valid existing order of the court for a period of six months from the date of service of the order on the defendant. Any changes or modifications of the order are effective upon entry of an order of the court and shall be registered with the sheriff within twenty-four hours of the entry of the order, excluding weekends and holidays.

I. A peace officer may, with or without a warrant, arrest a person if the peace officer has probable cause to believe that the person has violated § 13-2810 by disobeying or resisting an order issued pursuant to this section, whether or not such violation occurred in the presence of the officer. The provisions for release under § 13-3883, paragraph 4 and § 13-3903 do not apply to an arrest made pursuant to this section.

J. A person arrested pursuant to subsection I of this section may be released from custody in accordance with the rules of criminal procedure or other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions which the court deems appropriate, including participation in any counseling programs available to the defendant.

K. The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The police court and the justice court may hear and decide all matters arising pursuant to this section. No police court or justice court shall issue an order of protection where it appears from the petition that an action for annulment, legal separation or dissolution of marriage is pending between the parties. After issuance of an order of protection, if the police court or justice court is notified in writing by either party or by order of the superior court that an action for annulment, legal separation or dissolution of marriage is pending between the parties, the police court or justice court shall stop further proceedings in the action and forward all papers, together with a certified copy of docket entries or other record in the action, to the superior court where they shall be docketed in the pending superior court action and shall proceed as though the petition for an order of protection had been originally brought in the superior court. No order of protection shall be invalid or determined to be ineffective merely because it was issued by a lower court at a time when an action for annulment, legal separation or dissolution of marriage was pending in a higher court. After hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. An order entered by a justice court or police court after a hearing pursuant to this section may be appealed to the superior court as provided in title 22, chapter 2, article 4, § 22-425, subsection B and the superior court rules of civil appellate procedure without regard to an amount in controversy.

L. A peace officer making an arrest pursuant to this section or § 13-3601 is not civilly or criminally liable for such arrest if the officer acts upon probable cause and without malice.

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CHAPTER 30.—SHELTERS FOR DOMESTIC VIOLENCE VICTIMS

ARTICLE 1. GENERAL PROVISIONS:

Sec.	36-3004.	Application for fund monies; eligibility; payments; limitation; evaluation.
36-3001.	Definitions.	
36-3002.	Domestic violence shelter fund; purpose.	36-3005. Shelter requirements for eligibility.
36-3003.	Acceptance of grants and gifts.	36-3006. Priorities for allocating fund monies.
		36-3007. Annual report.

Chapter 30, consisting of Article 1, §§ 36-3001 to 36-3007, was added by Laws 1982, Ch. 285, § 1, effective July 24, 1982.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of §§ 36-3001 to 36-3007, was added by Laws 1982, Ch. 285, § 4, effective July 24, 1982.

§ 36-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Department" means the department of health services.
2. "Director" means the director of the department of health services.
3. "Domestic violence" means attempting to cause or causing bodily injury to a family or household member or placing a family or household member by threat of force in fear of imminent physical harm.
4. "Family or household member" means a spouse, a former spouse, a parent, a child or other adult person related by consanguinity or affinity who is residing or has resided with the person committing the domestic violence and dependents of such persons.
5. "Fund" means the domestic violence shelter fund.
6. "Shelter for victims of domestic violence" or "shelter" means a facility providing temporary residential service or facilities to family or household members who are victims of domestic violence.

Added by Laws 1982, Ch. 285, § 4.

§ 36-3002. Domestic violence shelter fund; purpose

A. There is established the domestic violence shelter fund consisting of monies received pursuant to § 11-554, subsection A, paragraph 16 and § 25-311.01, subsection E. The director shall administer the fund for the purposes prescribed in this chapter.

B. The director shall expend monies in the fund to provide financial assistance to shelters for victims of domestic violence.

C. Monies in the fund do not revert to the state general fund.

Added by Laws 1982, Ch. 285, § 4.

Cross References

Transfer of monies for deposit in fund, see §§ 11-554 and 25-311.01.

Library References

States ⇌ 127.
C.J.S. States § 228.

§ 36-3003. Acceptance of grants and gifts

The director may accept and expend federal monies and private grants, gifts, contributions and devisees to assist in carrying out the purposes of this chapter. Such monies do not revert to the state general fund at the close of a fiscal year.

Added by Laws 1982, Ch. 285, § 4.

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§ 36-3004. Application for fund monies; eligibility; payments; limitation; evaluation

A. A shelter for victims of domestic violence may apply to the director for a grant of fund monies for use for the funding of the shelter. All applications for fund monies shall be submitted by February 1 prior to the fiscal year for which the funding is desired and shall include all of the following:

1. Evidence that the shelter is operated in this state by a nonprofit corporation.
 2. A list of the trustees of the corporation and a list of the trustees of the shelter, if different.
 3. The proposed budget of the shelter for the following fiscal year.
 4. A summary of the services proposed to be offered in the following fiscal year.
 5. An estimate of the number of persons to be served during the following fiscal year.
- B. Upon receipt of an application for fund monies the director shall, on or before March 15 of the year in which the application is filed, notify the shelter in writing if it meets the criteria established in this chapter, is eligible for funds and, if eligible, the amount allocated to that shelter from the available fund monies.

C. Fund monies allocated to shelters under this section shall be paid in two installments, on July 1 of the fiscal year for which the application is filed and on January 1 of the fiscal year for which the application is filed.

D. A shelter is not eligible to receive more than forty thousand dollars in fund monies per fiscal year.

E. A shelter is not eligible to receive its second installment of fund monies under subsection C of this section if its application proposes the provision of temporary residential services and residential services are not provided in the first six months after receiving the funds. Such a shelter does not qualify for fund monies in the following year.

F. The department shall evaluate annually each shelter receiving fund monies for compliance with the minimum standards specified in this chapter. The department may enter and inspect the premises of shelters at any reasonable hour to effectively evaluate the state of compliance of the shelters with this chapter.

Added by Laws 1982, Ch. 285, § 4.

§ 36-3005. Shelter requirements for eligibility

A. To be eligible to receive fund monies under this chapter a shelter must:

1. Provide crisis counseling and support counseling for victims of domestic violence and their dependent children, if any.
2. Assist victims with information referral services to obtain legal assistance, financial assistance, housing assistance and transportation assistance.
3. Require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify persons served by the shelter.

B. A shelter for victims of domestic violence does not qualify for fund monies if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin or ancestry.

Added by Laws 1982, Ch. 285, § 4.

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§ 36-3006. Priorities for allocating fund monies.

If the director receives applications from more than one eligible shelter, and the requests for fund monies exceed the amount of fund monies available, fund monies may be allocated on the basis of the following priorities:

1. To shelters in existence on April 15, 1982.
 2. To shelters offering or proposing to offer the broadest range of services and referrals, including medical, psychological, financial, educational, vocational, child care and legal services.
 3. To shelters that utilize volunteers or other community resources.
- Added by Laws 1982, Ch. 285, § 4.

§ 36-3007. Annual report

A shelter for victims of domestic violence that receives fund monies pursuant to this chapter shall file an annual report with the department on or before January 31 of the year following the fiscal year in which fund monies were received. The annual report shall include statistics on the number of persons served by the shelter, the number of persons who asked for assistance but who the shelter was unable to serve, the relationship of the victim of domestic violence to the individual committing the domestic violence, the number of referrals made for medical, psychological, financial, educational, vocational, child care or legal services, and the results of an independent audit of the financial records of the shelter. Information contained in the report shall not identify any person served by the shelter or enable any person to determine the identity of any such person.

Added by Laws 1982, Ch. 285, § 4.

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	43-2350 et seq.
2.1 Sentencing Option	41-1201(1)(d), 2(f); 41-1203(2)(h), (5)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	43-2351
2.5 Administration/Enforcement	43-2356 (levy against restitution fund); 43-2808.3 (cost of supervision deducted from parolees wages); 46-117(c) (by offenders on work release)
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	28-524, 28-525
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	41-2609, 41-2610, 41-2612
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	43-2819
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	43-2819 et seq.
8.5 Testimony at Parole Hearing	43-2819 et seq.
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	43-2901 et seq.; Rule of Crim. Proc. 15.1 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	59-1303
12.3 Abuse, Neglect, Exploitation - Reporting	59-1301, 59-1305 et seq.
12.4 Abuse, Neglect, Exploitation - Protective Services	59-1308
13. Sexual Assault Victims	
13.1 Payment for Medical Services	41-1820 et seq.
13.2 Special Programs	41-1818 et seq. (task force on rape)
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	43-2035 et seq.
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	59-1314(3)(e) (on abused adults)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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CHAPTER 12

SUSPENSION OR PROBATION

SECTION.

41-1201. Criteria for utilizing chapter.

41-1202. Effect on statutes not a part of this code.

41-1203. Conditions of suspension or probation.

41-1204. Suspension or probation conditioned on confinement.

41-1205. Period of suspension or probation.

41-1206. Calculation of period of suspension or probation.

41-1207. Transfer of jurisdiction.

SECTION.

41-1208. Revocation of suspension and probation.

41-1209. Notice and hearings on revocation of suspension or probation.

41-1210. Discharge of defendant and dismissal of proceedings — Effect of discharge and dismissal.

41-1211. Suspension or probation — Effect on appeal and costs.

*41-1201. Criteria for utilizing chapter.—(1) If a defendant pleads or is found guilty of an offense other than capital murder, murder in the first degree, murder in the second degree, first degree rape, kidnapping or aggravated robbery, the court may suspend imposition of sentence or place the defendant on probation. The court shall not suspend imposition of sentence or place a defendant on probation if it is determined, pursuant to Section 1005 [§ 41-1005], that the defendant has previously been convicted of two [2] or more felonies. In making a determination as to suspension or probation, the court shall consider whether:

(d) the defendant has the means available or is so gainfully employed that restitution or compensation to the victim of his offense will not cause an unreasonable financial hardship and will be beneficial to the rehabilitation of the defendant.

(2) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of suspension or probation:

(f) the defendant has compensated or will compensate the victim of the offense for the damage or injury that he sustained;

41-1203. Conditions of suspension or probation.—(1) If the court suspends imposition of sentence on a defendant or places him on probation, it shall attach such conditions as are reasonably necessary to assist the defendant in leading a law-abiding life. The court shall provide as an express condition of every suspension or probation that defendant not commit an offense punishable by imprisonment during the period of suspension or probation.

(2) If the court suspends imposition of sentence on a defendant or places him on probation, it may, as a condition of its order, require that the defendant:

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- (a) support his dependents and meet his family responsibilities;
- (b) work faithfully at suitable employment;
- (c) pursue a prescribed secular course of study or vocational training designed to equip him for suitable employment;
- (d) undergo available medical or psychiatric treatment, and enter and remain in a specified institution, when required for that purpose;
- (e) participate in a community-based rehabilitative program;
- (f) refrain from frequenting unlawful or designated places or consorting with designated persons;
- (g) have no firearms in his possession;
- (h) make restitution or reparation to aggrieved parties, in an amount he can afford to pay, for the actual loss or damage caused by his offense;

(5) If the court suspends the imposition of sentence on a defendant or places him or [on] probation conditioned upon his making restitution or reparation under [subsection] (2) (h) of this Section the court shall by concurrence of the victim, defendant, and the prosecuting authority determine the amount to be paid as restitution. The court shall further after considering the assets, financial condition, and occupation of the defendant determine whether restitution shall be total or partial, the amounts to be paid if by periodic payments, and if personal services be contemplated the reasonable value and rate of compensation for services rendered to the victim. [Acts 1975, No. 280, § 1203, p. 500; 1977, No. 474, § 9, p. —; 1977, No. 482, § 3, p. —.]

* * *

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43-2350. Legislative determination.

The General Assembly recognizes that many innocent persons suffer injury, death, property damage and resultant financial hardship as a result of crimes committed in this State, and that there is a genuine need in this State to establish a method whereby the responsible offender, as far as practicable, may be required to make restitution to his victim so as to make that victim whole with respect to the financial injury suffered. [Acts 1981, No. 704, § 1, p. 1613.]

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43-2351. Judgment for restitution or reparations from offender to victim.

If a defendant pleads guilty or is found guilty of a criminal offense, the trial court of criminal jurisdiction shall, in addition to imposition of sentence, enter a monetary judgment against the defendant in an amount of restitution or reparations from the offender to the victim that will totally or partially compensate the victim for his personal injury or loss of or damage to his property caused by the criminal act of the offender. The court shall specify the total amount to be compensated, the rate of compensation, if periodic payments are provided, to whom it is to be paid; and, if personal service to the victim is the compensation, establish a reasonable value or rate of value for the services rendered. [Acts 1981, No. 704, § 2, p. 1613.]

43-2352. Determination of amount.

If a defendant pleads guilty or is found guilty following a trial before the court, the court shall determine the amount of restitution or reparations. If a defendant is found guilty following a trial before a jury, the jury shall determine the amount of restitution or reparations. [Acts 1981, No. 704, § 3, p. 1613.]

43-2353. Recommendation of prosecuting attorney as to amount — Evidence in mitigation.

To enable the court or jury, as the case may be, to properly fix the amount of restitution or reparations, the prosecuting attorney shall, after appropriate investigation, recommend an amount that would make the victim whole with respect to the financial injury suffered, including value of property loss or injury, cost of medical care, burial expenses, if applicable, and all other measurable monetary damages directly related to the offense. If the defendant disagrees with the recommendation of the prosecuting attorney, he shall be entitled to introduce evidence in mitigation of the amount recommended. [Acts 1981, No. 704, § 4, p. 1613.]

43-2354. Effect of judgment.

The monetary judgment, as provided herein, shall become a judgment against the offender and shall have the same force and effect as any other civil judgment recorded in this State. [Acts 1981, No. 704, § 5, p. 1613.]

43-2355. Act amendatory.

The provisions of this Act [§§ 43-2350 — 43-2355] are amendatory to and supplemental to Act 481 [482] of 1977, as amended. [Acts 1981, No. 704, § 6, p. 1613.]

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43-2356. Authority to establish restitution fund -- Levy of additional fines -- Application by victim for restitution.

The circuit judges of each judicial circuit may establish a restitution fund to be administered by the circuit judge, the prosecuting attorney, or probationary agency, whichever the circuit judge shall designate. The circuit judge shall provide rules and regulations for this fund and shall supervise same. The circuit judges may levy additional fines against criminal defendant and place the additional fine money in the restitution fund of the judicial circuit. Such additional fines shall be in an amount not to exceed the amount of the criminal penalty fine provided by law for the offense. The additional fine money shall be remitted to the fund to be deposited in a depository other than the county or State Treasury. Application for restitution may be made by victims of crime by written petition to the circuit judge, and such application shall be ruled upon without hearing. Nothing in this Act [this section] shall be construed as prohibiting any circuit judge from requiring any specific defendant to make direct restitution to specific victims. [Acts 1983, No. 807, § 1, p. —.]

46-117. Work activities -- Allocation and possession of money by inmates.

All inmates committed to the Department for institutional care shall be required to participate in the various work programs to which assigned and may be afforded vocational training and rehabilitative opportunities in accordance with rules, regulations, and procedures therefor as promulgated by the Director with the approval of the Board. The Department may institute "work release" programs under which the inmates selected to participate in such programs may be gainfully employed or attend school outside of the units maintained by the Department, under rules and regulations promulgated by the Director with the approval of the Board. Under any work release program, earnings by the inmate shall be paid directly to the Department and applied as follows:

(a) The Department shall retain an amount to be established by the Director which will reasonably compensate the Department for the cost of feeding, housing, and/or supervision of such inmates;

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(b) The Department shall determine if the inmate has persons dependent upon him for their support and may remit to such persons that portion of the earnings which the Director considers reasonable;

(c) The Department shall determine if the inmate has created victims of his criminal conduct who are entitled to restitution or reparations for physical injury or loss of or damage to property and may remit to such victim that portion of the earnings which the Director considers reasonable; provided, however, that in no case shall the portion of the earnings remitted for restitution be in excess of 25% of the inmate's income remaining after deduction [deduction] for the cost of care and custody, and family supports in subsections (a) and (b). The names and addresses of victims and the amount of restitution to be paid shall be provided to the Director by certificate of the trial court in which the defendant was convicted;

43-2808.3. Authority of employers of parolees and probationers to withhold moneys for cost of supervision -- Rules and regulations -- Remittance to department of correction.

Whenever an inmate in the Department of Correction becomes eligible for parole and makes application for release on parole, the Board of Pardons and Paroles may require, as a condition of granting such parole, that the parolee consent to his employer, upon parole, to withhold and remit to the Department of Correction the monthly charge, as established by regulations of the Board of Correction to defray the cost of supervision of said parolee during his release on parole. Such provisions shall also be applicable to persons on probation supervised by the Board of Pardons and Paroles. The Board of Pardons and Paroles may promulgate reasonable rules and regulations and forms to be followed by employers in withholding and remitting to the Department of Correction each month the amounts charged to defray the cost of the parolee/probationer's supervision while on parole or probation. Each employer withholding amounts as provided in this Act [§§ 43-2808.3, 43-2808.4] from the wages of employees who are on parole/probation supervision of the Department of Correction, shall remit the same to the Department not later than the tenth (10th) day following the end of each month. [Acts 1983, No. 789, § 1, p. —.]

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28-524. Witness fees. — Witnesses shall be allowed compensation as follows:

For attendance before any circuit court, arbitration, auditor, commissioner, or other persons in civil cases, Five Dollars (\$5.00) per day.

For attendance in criminal cases, Five Dollars (\$5.00) per day.

For attending before a justice of the peace, Fifty cents (50¢). [Act Feb. 25, 1875, No. 77, § 39, p. 167; C. & M. Dig., § 4611; Pope's Dig., § 5700; Acts 1969, No. 157, § 1, p. 448; 1975, No. 344, § 1, p. 879.]

28-525. Witness fees in county and probate courts. — Witnesses, duly summoned, shall be allowed for their attendance as such, in either County or Probate Courts, the sum of one dollar [\$1.00] for each day's attendance, in either court, to be taxed as other costs, and paid by the unsuccessful [unsuccessful] party. [Act Apr. 1, 1885, No. 121, § 2, p. 198; C. & M. Dig., § 4611; Pope's Dig., § 5700.]

* * *

41-2609. Intimidating a witness. — (1) A person commits the offense of intimidating a witness if he threatens a witness or a person he believes may be called as a witness with the purpose of:

- (a) influencing the testimony of that person; or
- (b) inducing that person to avoid legal process summoning him to testify; or

(c) inducing that person to absent himself from an official proceeding to which he has been legally summoned.

(2) Intimidating a witness is a class C felony. [Acts 1975, No. 280, § 2609, p. 500.]

41-2610. Tampering. — (1) A person commits the offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted, he induces or attempts to induce another person to:

- (a) testify or inform falsely; or
- (b) withhold any unprivileged testimony, information, document, or thing regardless of the admissibility under the rules of evidence of the testimony, document or thing, and notwithstanding the relevance or probative value of the information or thing to an investigation; or

(c) elude legal process summoning him to testify or supply evidence, regardless of whether such process was lawfully issued; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) Tampering is a class A misdemeanor. [Acts 1975, No. 280, § 2610, p. 500.]

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41-2612. Retaliation against witnesses, informants or jurors. — (1) A person commits the offense of retaliation against a witness, informant, or juror, if he harms or threatens to harm another by any unlawful act in retaliation for anything lawfully done in the capacity of witness, informant, or juror.

(2) Retaliation against witnesses, informants, or jurors is a class A misdemeanor. [Acts 1975, No. 280, § 2612, p. 500.]

* * *

43-2819. Recommendations necessary before parole granted.

Hereafter, before the State Parole Board shall grant any parole, the Board shall obtain the written or oral recommendations of the committing court, the prosecuting attorney and sheriff of the county from which the prisoner was committed, and if the person whose parole is being considered by the Board was convicted of capital murder or of a Class Y, Class A, or Class B felony, the Board shall also notify the victims of the crime or their next of kin committed by the person seeking parole of the parole hearing and shall solicit written or oral recommendations of such victims or their next of kin regarding the granting of the parole. The Board shall retain a copy of such recommendations in the Board's file. Such recommendations shall not be binding upon the Board in the granting of any parole, but shall be maintained in a file which shall be open to the public during reasonable hours. When soliciting recommendations from the victims of the crime, the Board shall notify the victims or their next of kin of the date, time and place of the parole hearing. It shall be the responsibility of the prosecuting attorney of the county from which the prisoner was committed to notify the State Parole Board of the last known address of the victims or their next of kin. [Acts 1969, No. 153, § 1, p. 443; 1981, No. 530, § 1, p. 1091; 1983, No. 8, § 1, p. —; 1983, No. 246, § 1, p. —.]

43-2819.1. Place of holding hearing to which victims or their relatives are invited.

Hereafter, the State Board of Pardons and Paroles shall not schedule parole hearings at which victims and/or relatives of victims of crime are invited to appear at a facility wherein inmates are housed other than the Central Administration Building of the Department of Correction at Pine Bluff. [Acts 1983, No. 525, § 1, p. —.]

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43-2819.2. Hearings may be held in two sessions.

Nothing in this Act [§§ 43-2819.1, 43-2819.2] shall be construed as prohibiting the Board of Pardons and Paroles from conducting parole hearings in two [2] sessions, one [1] at the place of the inmate's incarceration for interviews with the inmate, the inmate's witnesses, and correctional personnel and the second session for victims and relatives of victims as set out above. [Acts 1983, No. 525, § 2, p. —.]

Emergency. Section 4 of Acts 1983, No. 525, read: "It is hereby found and determined by the General Assembly that parole hearings are now held, at least in some instances, at the State Prison; that this results in undue hardship and intimidation of the victims and relatives of victims who appear at such parole hearings; that this Act would prohibit parole hearings from being held at the State Prison and is immediately necessary to protect the victims of crime. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Approved March 17, 1983.

Cross-References. Parole authority and procedures, § 43-2808.

43-2820. Notice of parole to sheriff and committing court, etc.

Cross-References. Release on parole to participate in work program, §§ 43-2835 — 43-2842.

CHAPTER 29

DISPOSITION OF STOLEN PROPERTY

SECTION.	SECTION.
43-2901. Ownership not divested.	43-2906. Duty of court.
43-2902. Owner's right of action.	43-2907. Sale when not claimed.
43-2903. Duty of officer.	43-2908. Animal or perishable property — Sale.
43-2904. Duty of magistrate.	43-2909. Description to be filed.
43-2905. Property in magistrate's hands.	

43-2901. Ownership not divested. — All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. [Rev. Stat., ch. 44, div. 4, art. 6, § 3; C. & M. Dig., §§ 1084, 10240a; Pope's Dig., §§ 1292, 1295.]

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Compiler's Notes. For corresponding Rule see Criminal Rule 15.3.

Cross-References. Disposition of seized property, §§ 41-1401, 41-1402, Criminal Rules 15.1 et seq.

Robbery, § 41-2101 et seq.

Theft, § 41-2201 et seq.

Comparative Legislation. Disposition of stolen property:

Ky. Rev. Stat. §§ 431.200, 431.210.

Okla. Stat. tit. 22, § 1321 et seq.

NOTES TO DECISIONS

ANALYSIS

Directed verdict.

Insurance on stolen property.

Title.

Directed Verdict.

In a replevin action seeking to recover a quantity of drill pipe and damages, the undisputed evidence showed the pipe was owned by appellant, carried away by another without consent of the appellant and with the intent (by the purported sale to the appellee) to deprive the owner of his property, and therefore, the trial court erred in not granting a directed verdict. *Superior Iron Works & Supply Co. v. McMillan*, 235 Ark. 207, 357 S.W.2d 524 (1962).

Insurance on Stolen Property.

Insured and his assignee under automobile policy could not recover against insurer for collision of car, if evidence showed that car was a stolen car, and real owner of car had repossessed same after collision, as purchaser of stolen car does not have sole and unconditional ownership. *Southern Farmers Mut. Ins. Co. v. Motor Fin. Co.*, 215 Ark. 601, 222 S.W.2d 981 (1949).

Title.

Title to stolen property remains in its rightful owner. *Superior Iron Works & Supply Co. v. McMillan*, 235 Ark. 207, 357 S.W.2d 524 (1962).

Collateral References

Imposition of constructive trust in property bought with stolen or embezzled funds. 38 A.L.R.3d 1354.

Rights of one who acquires lost or stolen traveler's checks. 42 A.L.R.3d 846.

Rights of owner of stolen money as against one who won it in gambling transaction from thief. 44 A.L.R.2d 1242.

43-2902. Owner's right of action. — Any person losing property or any valuable thing by larceny, robbery or burglary, may maintain his action not only against such felon, but against any person whatsoever, in whose hands or possession the same may be found. [Rev. Stat., ch. 44, div. 4, art. 6, § 4; C. & M. Dig., §§ 1085, 1024b; Pope's Dig., §§ 1293, 1296.]

Cross-References. Motions for return or restoration of seized things, Criminal Rule 15.2.

See notes to § 43-2901. *Southern Farmers Mut. Ins. Co. v. Motor Fin. Co.*, 215 Ark. 601, 222 S.W.2d 981 (1949); *Superior Iron Works & Supply Co. v. McMillan*, 235 Ark. 207, 357 S.W.2d 524 (1962).

Collateral References. Auctioneer's liability to buyer for sale of stolen property. 88 A.L.R.2d 762.

43-2903. Duty of officer. — When property alleged to have been stolen, shall have come into the possession of any sheriff, constable or any other person authorized to perform the duties of such officer, he shall hold the same subject to the order of the officer hereinafter authorized to direct the disposition thereof. [Rev. Stat., ch. 45, § 228; C. & M. Dig., § 3359; Pope's Dig., § 4207.]

Cross-References. Retention of seized things by seizing officer, Criminal Rule 15.1.

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43-2904. Duty of magistrate. — Upon receiving satisfactory evidence of the ownership of such property, the magistrate who shall take the examination of the person accused of stealing such property, may order the same to be delivered to such owner, on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property. [Rev. Stat., ch. 45, § 229; C. & M. Dig., § 3360; Pope's Dig., § 4208.]

43-2905. Property in magistrate's hands. — If stolen property come into the hands of a justice of the peace or other magistrate, upon satisfactory proof of the ownership thereof, it shall be delivered to the owner, on the payment of the necessary expenses incurred in the preservation thereof, to be certified by the magistrate. [Rev. Stat., ch. 45, § 230; C. & M. Dig., § 3361; Pope's Dig., § 4209.]

43-2906. Duty of court. — If the property stolen shall not have been delivered to the owner thereof, the court before which a conviction shall be had for stealing such property, may, on proof of the ownership, order the same to be restored to the owner, on payment of the expenses incurred in the preservation thereof. [Rev. Stat., ch. 45, § 231; C. & M. Dig., § 3362; Pope's Dig., § 4210.]

43-2907. Sale when not claimed. — If stolen property shall not be claimed by the owner within six [6] months from the time any person may have been convicted for stealing the same, the court or magistrate authorized by the preceding provisions, to order a restoration may order the same to be sold; and the proceeds of the sale, after payment of the expenses of the preservation and sale of such property, shall be paid into the county treasury, for the use of the county. [Rev. Stat., ch. 45, § 232; C. & M. Dig., § 3363; Pope's Dig., § 4211.]

RULE 15. DISPOSITION OF SEIZED THINGS

RULE 15.1 Custody of Seized Things: Retention by Seizing Officer.

In all cases of seizure the law enforcement officer making the seizure shall provide for the appropriate safekeeping of the things seized.

RULE 15.2 Motions for Return or Restoration of Seized Things.

(a) **WHO MAY FILE.** Within thirty (30) days after notice of seizure, or at such later date as the court in its discretion may allow:

(i) the individual from whose person, property, or premises things have been seized may move the court to whom the warrant was returned, or the

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court having jurisdiction of the offense in question, as the case may be, to return things seized to the person or premises from which they were seized; and

(ii) any other person asserting a claim to rightful possession of the things seized may move the court having jurisdiction of the matter to restore the things seized to such person.

(b) **GROUND.** Motions for return or restoration of seized things shall be based on the ground that the moving party has a valid claim to rightful possession of things seized, because:

(i) the things had been stolen or otherwise converted, and the moving party is the owner or rightful possessor;

(ii) the things seized were not in fact subject to seizure;

(iii) the moving party, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure; or

(iv) although the things seized were subject to seizure, the moving party is or will be entitled to their return or restoration on the court's determination that they are no longer needed for evidentiary purposes.

(c) **CUSTODY ORDER.** When a motion is made for the return or restoration of seized things, the court shall enter a custody order which shall provide for the safekeeping of the things seized, with conditions of appropriate privacy for documents and other records.

(d) **POSTPONEMENT OF RETURN.** In granting a motion for return or restoration of seized things, the court may postpone execution of the order for return or restoration, until such time as the things need no longer remain available for evidentiary use.

(e) **APPELLATE REVIEW.** An order granting a motion for return or restoration of seized things shall be reviewable on appeal in regular course as a final order. An order denying such a motion, or entered under Rule 15.2 (f), shall be reviewable on appeal upon certification by the court having custody of such things that they are no longer needed for evidentiary purposes.

(f) **DISPUTED POSSESSION RIGHTS.** If, upon consideration of a motion or motions for return or restoration of seized things, it appears that the things should be returned or restored; but there is a substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants as to rightful possession, the court hearing the matter may, in its discretion, return the things to the person from whose possession they were seized, or impound the things seized and remit the several claimants to appropriate civil process for determination of the claims.

(g) **DISPOSITION OF CONTRABAND AND UNCLAIMED GOODS.** At such time as the court finds that there is no further need for custody of the seized things, and if no motion for return or restoration of the seized things has been made, the court shall order the things to be delivered to the officials charged with responsibility under the applicable laws for the sale, destruction, or other disposition of contraband and unclaimed goods in official custody.

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CHAPTER 13 ABUSE OF ADULTS

SECTION.	SECTION.
59-1301. Definitions.	Report admissible as evidence.
59-1302. Legislative intent.	
59-1303. Abuse of adult — Penalty.	59-1310. Departmental investigation required — Nature of investigation.
59-1304. Spiritual treatment alone not abusive.	59-1311. Participants in investigation given immunity.
59-1305. Persons required to report abuse.	59-1312. Privilege not grounds for exclusion of evidence.
59-1306. Report of death caused by abuse.	59-1313. Penalties for failure to report abuse when required.
59-1307. Photographs and x-rays.	59-1314. Establishment of central registry and statewide telephone number — Confidential nature of reports — Expungement of unfounded information.
59-1308. Emergency protective custody — Voluntary protective custody — Temporary protective custody — Long term protective custody.	
59-1309. Manner of making report — Contents of report —	

59-1301. Definitions.

As used in this Act [§§ 59-1301 — 59-1314] the following words and phrases shall have the following meanings unless the context hereof clearly indicates otherwise:

(1) "Endangered adult" means an adult (eighteen (18) years or older) who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to such person and who demonstrates the lack of capacity to comprehend the nature and consequence of remaining in that situation or condition.

(2) "Abuse" and "Maltreatment" means any willful or negligent act which results in negligence, malnutrition, physical assault or battery, physical or psychological injury inflicted by other than accidental means and failure to provide necessary treatment, rehabilitation, care, sustenance, clothing, shelter, supervision, or medical services.

(3) "Exploitation" means any unjust or improper use of another person for one's own profit or advantage.

(4) "Imminent Danger to Health or Safety". A situation in which death or severe bodily injury could reasonably be expected to occur without intervention. (The burden of proof shall be upon the department to show by a clear and convincing evidence that such imminent danger exists).

(5) "Protective Services" means those services, the objective of which is to protect the endangered adult from himself and others. Said Protective Services shall include, but not be limited to, evaluation of the need for services, arrangements for appropriate services,

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assistance in obtaining financial benefit to which the person is entitled, or securing medical and legal services. In those situations where exploitation, prevention of injury, and protection of the person and his/her property are at issue, protective services shall include seeking the appointment of a guardian or seeking protective custody.

(6) "Department" means the Department of Human Services. The director of the department may assign to respective divisions of said department responsibilities for administering the various duties imposed upon the department under this Act which, in his opinion, are best able to render service or administer the provisions of this Act. [Acts 1983, No. 452, § 1, p. —.]

Compiler's Notes. Section 15 of Acts 1983, No. 452 purported to repeal "Act 166 of 1977, as amended, Arkansas Statutes 19-1301 et seq." Since Acts 1977, No. 166, which also concerned adult abuse, was compiled as §§ 59-1301 — 59-1314, it appears that those sections, and not § 19-1301 et seq., were intended for repeal. Accordingly, former §§ 59-1301 — 59-1314 (Acts 1977, No. 166, §§ 1 — 13, p. 189; 1979, No. 72, § 1, p. 154) are deemed to be repealed by Acts 1983, No. 452, § 15, effective July 3, 1983. The words in parentheses so appeared in the law as enacted.

59-1302. Legislative intent.

The General Assembly recognizes that rehabilitative and ameliorative services are needed to provide for the detection and correction of the abuse, maltreatment, or exploitation of adults who are unable to protect themselves. Such abuse, maltreatment, or exploitation includes any willful or negligent acts which result in neglect, malnutrition, sexual abuse, unreasonable physical injury, material endangerment to mental health, unjust or improper use of an adult for one's own advantage, and failure to provide necessary treatment, attention, sustenance, clothing, shelter, or medical services by a caretaker or by the impaired individual. [Acts 1983, No. 452, § 2, p. —.]

59-1303. Abuse of adult — Penalty.

(1) Whoever, willfully or by culpable negligence, deprives an adult of, or allows an adult to be deprived of necessary food, clothing, shelter, or medical treatment, or who knowingly or by culpable negligence permits the physical or mental health of the adult to be materially endangered, and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to such adult, shall be guilty of a Class D felony, and shall be punished therefor as provided by law.

(2) Whoever, willfully or by culpable neglect, deprives an adult of, or who allows an adult to be deprived of necessary food, clothing, shelter, or medical treatment, or who knowingly or by culpable negligence permits the physical or mental health of an adult to be materially endangered, shall be guilty of a Class B misdemeanor and shall be punished as provided by law.

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(3) Whoever negligently deprives an adult of, or allows an adult to be deprived of, necessary food or shelter or medical treatment, is guilty of a Class C misdemeanor, and shall be punished accordingly.

(4) a. Any person who, after notice, fails to provide support which he is able to provide to an adult or spouse whom he knows he is legally obligated to support, and over whom no court has jurisdiction in any proceeding for support, on dissolution of marriage, shall be guilty of a Class B misdemeanor and shall be punished accordingly.

b. Prior to commencing prosecution under Subsection (a) of this section, the Prosecuting Attorney shall advise the person responsible for support by certified mail, return receipt requested, that a prosecution under this Section will be commenced against him, unless he makes such delinquent support payments or provides satisfactory explanation as to why he has not made such payment. [Acts 1983, No. 452, § 3, p. —.]

Compiler's Notes. Former § 59-1303 was repealed. See Compiler's Notes, § 59-1301.

59-1304. Spiritual treatment alone not abusive.

Nothing in this Act [§§ 59-1301 — 59-1314] shall be construed to imply that a reported endangered adult, who is being furnished with treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, is for this reason alone an endangered, abused, maltreated, or exploited person. [Acts 1983, No. 452, § 4, p. —.]

59-1305. Persons required to report abuse.

Whenever any physician, surgeon, coroner, dentist, osteopath, resident intern, registered nurse, hospital personnel (engaged in the administration, examination, care or treatment of persons), social services worker, mental health professional, peace officer, or law enforcement official has reasonable cause to suspect that an endangered adult has been subjected to conditions or circumstances which would reasonably result in abuse, he shall immediately report or cause a report to be made to the Central Registry. Whenever such person is required to report under this Act [§§ 59-1301 — 59-1314] in his capacity as a member of the staff he shall immediately notify the person in charge of such institution, facility, or agency, or his designated agent, who shall then become responsible for making a report or cause such a report to be made.

In addition to those persons and officials required to report suspected adult abuse, sexual abuse, and/or neglect, any other person may make a report if such person has reasonable cause to suspect that such adult has been abused or neglected. [Acts 1983, No. 452, § 5, p. —.]

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59-1306. Report of death caused by abuse.

Any person or official who is required to report cases of suspected abuse of endangered adults, under the provisions of this Act [§§ 59-1301 — 59-1314], who has reasonable cause to suspect that any such adult has died as a result of abuse, sexual abuse, or negligence, shall report such fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his findings to the police, the appropriate District Attorney, and, if the institution making the report is a hospital, to the hospital. [Acts 1983, No. 452, § 6, p. —.]

Compiler's Notes. Former § 59-1306 was repealed. See Compiler's Notes, § 59-1301.

59-1307. Photographs and x-rays.

Any person who is required to report cases of adult abuse, sexual abuse, and/or negligence, may take or cause to be taken, at public expense, color photographs of the area of trauma visible on the adult, and if medically indicated, cause to be performed radiological examination of the adult. Any photographs and/or x-rays taken shall be sent to the Department as soon as possible. Whenever such person is required to report under this Act [§§ 59-1301 — 59-1314] in his capacity as a member of the staff of any private or public institution or agency, he shall immediately notify the person in charge of such institution or agency of [or] his designated delegate, who shall then take or cause to be taken, at public expense, color photographs or [of] physical trauma and shall, if medically indicated, cause to be performed radiological examination of the adult. [Acts 1983, No. 452, § 7, p. —.]

Compiler's Notes. Former § 59-1307 was repealed. See Compiler's Notes, § 59-1301.

59-1308. Emergency protective custody — Voluntary protective custody — Temporary protective custody — Long term protective custody.

(1) Emergency Protective Custody. The department, a police officer, a law enforcement official, or a designated employee of a city or county, department or office of social service, may take an endangered adult into emergency protective custody or any person in charge of a hospital or similar institution or any physician treating any such adult may keep such adult in his custody, whether or not medical treatment is required, if the circumstances or condition of the

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adult are such that continuing at his place of residence or in the care or custody of a parent, guardian, or other person responsible for the adult's care presents imminent danger to such adult's health or safety and that said adult lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents imminent danger to his health or safety. Provided, however, that such emergency protective custody shall not exceed seventy-two (72) hours and the probate court and the Department shall be notified immediately upon taking such adult into emergency protective custody, in order that adult protective proceedings may be initiated.

When action is taken under this Subsection (a) [(1)] for emergency protective custody, a preliminary hearing shall be held within forty-eight (48) hours to establish probable cause for grounds for protective custody. Upon finding of probable cause, the court may order temporary protective custody for up to fourteen (14) days, pending the hearing for long-term protective custody.

(2) Voluntary Protective Placement. Any person may request voluntary protective placement under this Act [§§ 59-1301 — 59-1314]. No civil rights are relinquished as a result of such placement.

(3) Temporary Protective Custody. Any person or official authorized to take an adult into emergency protective custody under subsection (a) [(1)] of this section may request the probate court to hold a preliminary hearing to establish probable cause for a hearing for long-term protective custody for medical treatment, personal assistance, or physical and/or psychological evaluation for up to fourteen (14) days, or simply order a hearing for long-term protective custody to be held within fourteen (14) days.

(4) Notice of Long-term Protective Custody. Notice of petition for long-term protective custody shall be served upon the respondent at least ten (10) days prior to the time set for a hearing. Upon service of the notice, the respondent will be given notice of the long term hearing, a copy of the petition and a copy of the Order for the hearing. In addition, the respondent will be advised of the following rights: (a) the right to effective assistance of counsel; (b) the right to be present at the hearing; (c) the right to present evidence on his own behalf; (d) the right to cross-examine witnesses who testify against him; (e) the right to present witnesses in his own behalf; (f) the right to remain silent; (g) the right to view and copy all petitions, reports, and documents retained in the court file.

The persons serving the notice shall return the certificate of notice to the probate court verifying that the petition and copy of rights has been delivered and notice given. Additionally, notice shall be given to the legal counsel; next of kin (whose names and address are known to the petitioner), person having physical custody of the respondent, any person named in the petition, and upon the department of any governmental agency or private group from whom the respondent is known to be receiving aid, and upon such other persons, or entities as the court may require.

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(5) Hearing For Long-Term Protective Custody. Hearing for long-term protective custody shall be no later than fourteen (14) days from the date the order for Temporary Protective Custody was signed.

The court shall make a finding in connection with the determination of the least drastic alternative to be considered proper under the circumstances, including the finding for non-institutional care wherever possible. The court shall in the order specify:

- the placement or care plan to be followed;
- the reason for the placement and/or care to be given;
- judicial court review of the case, either formal or informal as determined by the court, at least once a year;
- the scope and duration of the order;
- the court shall order the department to do periodic reviews of the case every six (6) months, or more frequently if warranted.

Placement under this subsection does not replace commitment of a person in need of acute psychiatric treatment. Placement may be in such facilities as nursing homes, boarding homes, medical institutions, foster care services, or other facilities that provide either medical or personal supervision.

No long-term protective custody may be ordered unless there is a determination by the court that:

(1) The person is lacking the capacity to comprehend the nature and consequence of remaining in a situation that presents an imminent danger to his health or safety.

(2) The individual is unable to provide for his own protection from abuse or neglect.

(3) The court finds clear, convincing evidence that the individual to be placed is in need of placement as provided in this Act [§§ 59-1301 — 59-1314]. Any person aggrieved by any order for long-term protective custody may appeal therefrom to a court of competent jurisdiction in the manner and procedures now provided by law. [Acts 1983, No. 452, § 8, p. —.]

Compiler's Notes. Former § 59-1308 was repealed. See Compiler's Notes, § 59-1301.

The bracketed subsection designation "(1)" in the second paragraph of subsection (1) and in subsection (3) was inserted by the compiler as this section contains no subsection (a). The words in parentheses so appeared in the law as enacted.

59-1309. Manner of making report — Contents of report — Report admissible as evidence.

(1) Reports of abuse, sexual abuse and/or negligence of an endangered adult may, pursuant to this Act [§§ 59-1301 — 59-1314], be made by telephone and shall be followed by a written report within forty-eight (48) hours, if so requested by the receiving agency. The receiving agency shall immediately forward a copy of the report to the Statewide Central Registry on forms supplied by said Registry.

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(2) Such reports shall include the following information: names and addresses of the next of kin or persons responsible for care, if known; the person's age, sex, and race; the nature and extent of the injury, sexual abuse, or negligence, including any evidence of previous injury, sexual abuse, or negligence to the person; the names and addresses of persons responsible for injury, sexual abuse, or negligence, if known; family composition; the source of the report; the person making the report; his reporting source, including the taking of photographs and x-rays, removal or keeping of the person of the abused adult or notifying the coroner, medical examiner, and other information that the person making the report believes may be helpful in the furtherance of the purposes of this Act.

(3) If appropriate, a copy of this report shall immediately be made available to the appropriate law enforcement agency for its consideration.

(4) A written report from persons or officials required by this Act to report shall be admissible in evidence in any proceeding relating to adult abuse, sexual abuse, or negligence. [Acts 1983, No. 452, § 9, p. —.]

59-1310. Departmental investigation required — Nature of investigation.

(1) The Department shall make a thorough investigation promptly upon receiving either the oral or written report. The primary purpose of such investigation is to protect the abused adult.

(2) The investigation shall include the nature, extent, and cause of the abuse, sexual abuse or negligence of the endangered adult; the (identity) of the person responsible therefor; the names and conditions of other adults in the home; the evaluation of the persons responsible for the care of the abused adult, if any; the home environment and relationship of the adult to the next of kin or other person responsible for his care, and all other pertinent data.

(3) The investigation shall include a visit to the abused adult's home and an interview with the abused adult. If the admission to the home, institution, or other place that the abused adult may be, or permission of the next of kin or other person responsible for the adult or in charge of any place where the abused adult may be cannot be obtained, then the probate court, upon cause shown, shall order the next of kin or person responsible and in charge of any place where the abused adult may be to allow entrance for the examination and investigation.

(4) The investigation may include a medical, psychological, social, vocational, and educational evaluation and review, where necessary.

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(5) If, before the examination is completed, the opinion of the investigators is that the immediate removal of the endangered adult is necessary to protect him from further abuse or neglect, the probate court, on petition by the investigators, and good cause being shown, may issue an order for temporary protective custody in the manner and procedures provided in Section 8 [§ 59-1308] of this Act. The investigative reports of the Department shall be made available to the probate court upon request.

(6) The Department shall make a written report or case summary, together with services offered and accepted, to the State Central Registry on forms supplied by the Registry for the purpose. [Acts 1983, No. 452, § 10, p. —.]

59-1311. Participants in investigation given immunity.

Any person, official, or institution participating in good faith in the making of a report, the taking of photographs, or the removal of an abused adult pursuant to this Act [§§ 59-1301 — 59-1314], shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions. For the purpose of any proceedings, civil or criminal, the good faith of any person required to report cases of adult abuse, sexual abuse or neglect, shall be presumed. [Acts 1983, No. 452, § 11, p. —.]

59-1312. Privilege not grounds for exclusion of evidence.

Any privilege between husband and wife or between any professional person, except lawyer and client, including but not limited to physicians, ministers, counselors, hospitals, clinics, rest homes, nursing homes and their clients shall not constitute grounds for excluding evidence at any proceedings regarding adult abuse, sexual abuse and/or neglect of an endangered adult, or the cause thereof. [Acts 1983, No. 452, § 12, p. —.]

59-1313. Penalties for failure to report abuse when required.

(1) Any person, official, or institution required by this Act [§§ 59-1301 — 59-1314] to report a case of suspected adult abuse, sexual abuse, or neglect, who willfully fails to do so shall be guilty of a Class C misdemeanor and shall be punished accordingly.

(2) Any person, official or institution required by this Act to report a case of suspected adult abuse, sexual abuse, or neglect, and who willfully fails to do so shall be civilly liable for damages proximately caused by such failure. [Acts 1983, No. 452, § 13, p. —.]

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59-1314. Establishment of central registry and statewide telephone number — Confidential nature of reports — Expungement of unfounded information.

(1) There shall be established within the department a Statewide Central Registry for abused adults, sexual abuse, neglect, made pursuant to this Act [§§ 59-1301 — 59-1314].

(2) There shall be a single Statewide telephone number that all persons, whether mandated by law or not, may use to report cases of suspected adult abuse, sexual abuse, and neglect, and that all persons so authorized by this Act may use for determining the existence of prior records in order to evaluate the conditions or circumstances of the abused adult before them. Such oral telephone report shall immediately be transmitted by the Central Registry to the local adult protective services. If the records indicate a previous report concerning the subject of the report or other pertinent information, the appropriate local protective agency shall be notified of these facts.

(3) The Central Registry shall contain, but shall not be limited to: information in the written report; records of final disposition of the report including services offered and services accepted; the plan for rehabilitation treatment; the names and identifying data, dates, and circumstances of persons requesting or receiving information from the Registry; and any other information which might be helpful in furthering the purposes of the Act.

(4) Reports made pursuant to this Act, as well as any other information obtained, and reports written or photographs taken concerning such report in the possession of the Department shall be confidential and shall be made available to:

a. A physician who has before him an endangered adult, who he reasonably believes may have been abused, sexually abused, or neglected;

b. A person authorized to place the adult in protective custody when such a person has before him an adult who he reasonably believes may have been abused, sexually abused, or neglected, and such person requires such information to determine whether to place such adult in protective custody;

c. A duly authorized agency having responsibility for the care or supervision of a subject of a report;

d. Any person who is the subject of a report;

e. A court where it determines that such information is necessary for the determination of an issue before the court.

Under no circumstances shall the information contained in the Statewide Central Registry for Abused Adults be released unless the person's or official's capacity is confirmed by the Department and the released information states whether or not the report is founded or unfounded. A person given access to names or other information identifying a subject of the report, except the subject of a report, shall not divulge or make public identifying information unless he is the

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Prosecuting Attorney or other law enforcement official, and the purpose is to initiate court action. Provided, however, that information contained in the Statewide Central Registry for Abused Adults may be made available to bona fide and approved research groups solely for the purpose of scientific research, but in no event shall the names of individuals be released, nor shall specific circumstances or facts related to a specific individual be utilized in any such research report which might be identifiable with such individual.

(5) Unless an investigation of a report conducted pursuant to this Act [§§ 59-1301 — 59-1314] determines that some credible evidence exists of alleged abuse, sexual abuse, or neglect of an endangered adult, all information identifying on the subject of the report shall be expunged from the Central Registry forthwith.

(6) At any time, the subject of a report may receive, upon request, a report of all information contained in the Central Registry; provided, however, that the Director of the Department or his authorized agent is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the interest or safety of such person.

(7) At any time, subsequent to the completion of the investigation, but in no event later than ninety (90) days after the receipt of a report, a subject of the report may request the Director of the Department to amend, seal, or expunge the record of the report. If the Director refuses or does not act within a reasonable time, but in no event later than thirty (30) days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the Central Registry should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Act. The burden, in such a hearing, shall be on the Department and appropriate adult protective services. Notice shall be given to all parties concerned, and in such hearings the fact that there was such a finding of adult abuse, sexual abuse, or negligence shall be presumptive evidence that the report was substantiated.

(8) Written notice of any amendment or expungement made pursuant to the provisions of this Act [§§ 59-1301 — 59-1314] shall be served on each subject of such report and, to the appropriate local adult protective service. The latter, upon receipt of this notice, shall take similar action regarding any Central Registry for adult abuse, sexual abuse, and/or negligence.

(9) Any person who willfully permits and any other person who encourages the release of data or information contained in the Central Registry to persons not permitted by this Act shall be guilty of a Class A misdemeanor.

(10) The Central Registry may adopt such rules and regulations which may be necessary to encourage cooperation with other states in exchanging reports, to effect a national registry system of adult abuse, sexual abuse, and/or neglect. [Acts 1983, No. 452, § 14, p. —.]

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41-1818. Task force on rape created — Duties and responsibilities.

There is hereby created a Governor's Task Force on Rape which shall have the following duties and responsibilities:

- (a) Address the problems created by the ever increasing crime of rape and other sex crimes.
- (b) Facilitate an exchange of information between the various agencies that are involved in the prevention of rape, prosecution of offenders and support services for victims.
- (c) Educate the public about the prevention and effect of the crime of rape.
- (d) Advise the Governor and Legislation [Legislature] upon request as to the appropriateness of proposed legislation. [Acts 1981, No. 881, § 1, p. 2018.]

Compiler's Notes. The bracketed word "Legislature" in subdivision (d) was inserted by the compiler. **Cross-References.** Rape defined, § 41-1803.

41-1819. Membership of task force — Establishment of rules and procedures.

The Task Force [Force] shall be composed of members who have demonstrated an interest in the problems relating to rape, and shall serve for two (2) year terms. The Governor shall appoint five (5) members at large, and thirteen (13) members to represent the following interests:

1. Arkansas Department of Correction
2. State Police
3. State Crime Laboratory
4. Crime Information Center
5. Prosecuting Attorney's Association
6. Prosecutor Coordinator's Office
7. Victim/Witness Support Units
8. Arkansas Law Enforcement Training Academy
9. Mental Health Providers
10. Hospitals that perform victim examinations
11. Sheriff's Association
12. Municipal Police
13. Criminal Justice Educators

The Task Force members shall select from among their members a "Chairman" and they shall establish rules and procedures for the

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effective performance of their duties and responsibilities as set forth in this Act [§§ 41-1818, 41-1819]. [Acts 1981, No. 881, § 2, p. 2018.]

Compiler's Notes. The bracketed word "Force" in the first sentence was inserted by the compiler.

41-1820. Emergency medical/legal examinations — Victim defined.

"Victim" means any person who has been a victim of any sexual assault or incest as defined by Act 280 of 1975, as amended (Ark. Stats. 41-1801 et seq. and 41-2403). [Acts 1983, No. 403, § 1, p. —.]

41-1821. Appropriate emergency medical/legal examinations defined.

(a) "Appropriate emergency medical/legal examinations" means health care delivered to out-patients with emphasis on the collection of evidence for the purpose of prosecution. It shall include, but not be limited to:

- (1) appropriate stains and cultures to determine the presence or absence of venereal disease; and
- (2) all components contained in an evidence collection kit for sexual assault examination deemed appropriate by the Serology Division of the State Crime Laboratory.

(b) "Appropriate emergency medical/legal examinations" shall not include the treatment of emotional trauma or ambulance services. [Acts 1983, No. 403, § 2, p. —.]

41-1822. Medical facility defined.

"Medical facility" means any health care provider. [Acts 1983, No. 403, § 3, p. —.]

41-1823. Emergency medical/legal examinations for sexual assault victims — Conditions for exemption from payment — Treatment for which victim liable.

(a) The University of Arkansas Medical Sciences Campus shall provide prompt, appropriate emergency medical/legal examinations for sexual assault victims. All victims seeking treatment shall be exempted from the payment of expenses incurred as a result of said treatment provided the following conditions are met:

- (1) the assault must be reported to a law enforcement agency; and
- (2) the victim must seek treatment within forty-eight (48) hours of the attack.

(b) It is the express intent of this Act [§§ 41-1820 — 41-1825] that the victim shall be liable for any medical treatment of a pre-existing injury, physical injury resulting from the assault, and any treatment sought or rendered more than forty-eight (48) hours after the attack. [Acts 1983, No. 403, § 4, p. —.]

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41-1824. Time limitation waived for minor.

In the event the victim is a minor, the forty-eight (48) hour time limitation may be waived, if, in the opinion of the examining physician, evidence of sexual activity could be found. [Acts 1983, No. 403, § 5, p. —.]

41-1825. Reimbursement of medical facility — Rules and regulations.

The Office of the Prosecutor Coordinator may reimburse any medical facility that provides the services outlined in this Act [§§ 41-1820 — 41-1825] for the reasonable cost incurred for such services. The Prosecution Coordination Commission is empowered to prescribe minimum standards, rules, and regulations necessary to implement this Act. These shall include, but not be limited to, a cost ceiling for each claim and the determination of reasonable cost. [Acts 1983, No. 403, § 6, p. —.]

* * *

VIDEOTAPE DEPOSITIONS OF MINOR VICTIMS IN SEXUAL OFFENSE PROSECUTIONS

43-2035. Definition.

"Videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court. [Acts 1981, No. 368, § 1, p. 662.]

Legal Periodicals. Legislative Survey, Criminal Law, 4 UALR L.J. 583 (1981).

43-2036. Videotaped deposition of alleged victim under seventeen years of age in sexual offense prosecution — Procedure — Use.

In any prosecution for a sexual offense or criminal attempt to commit a sexual offense against a minor, upon motion of the prosecuting attorney and after notice to the opposing counsel, the court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of seventeen (17) years. The videotaped deposition shall be taken before the judge in

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chambers in the presence of the prosecuting attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of the Arkansas Uniform Rules of Evidence. Any videotaped deposition taken under the provisions of this Act [§§ 43-2035 — 43-2037] shall be admissible at trial and received into evidence in lieu of the direct testimony of the victim. However, neither the presentation nor the preparation of such videotaped deposition shall preclude the prosecutor's calling the minor victim to testify at trial if that is necessary to serve the interests of justice. [Acts 1981, No. 368, § 2, p. 662; 1983, No. 407, § 1, p. —.]

43-2037. Protective orders.

Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim. [Acts 1981, No. 368, § 3, p. 662.]

Category	Citation
1. Victim Compensation Program	Gov. §§13959 et seq.; 13970 et seq.; 29631 et seq.
1.1 Responsible Agency	Gov. §13960(e)
1.2 Eligible Claimants	Gov. §§13960(a), 13964, 13970, 13971
1.3 Losses Covered	Gov. §§13960(b),(d); 13965, 13970, 29632
1.4 Minimum and Maximum Award	Gov. §§13965(a)(4), 13973(c)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	Gov. §13961(c)
1.8 Emergency Award	Gov. §13961.1
1.9 Funding	Gov. §§13967, 29636; Penal §1202.4 (restitution fines)
2. Restitution	
2.1 Sentencing Option	
2.2 Mandatory Condition of Probation	Penal §§1202.4(a), 1203.04, 1203.1
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	Cal. Const. Art. 1, §28(b)
2.5 Administration/Enforcement	Penal §§1203.1, 1203.1d
3. Esconrow and Forfeiture of Offender Profits	Civil §2224.1
4. Witness Fees	Penal §1329
5. Victim's Bill of Rights	See, Cal. Const. Art. 1 §28
6. Protection from Intimidation	
6.1 Crime Defined	Penal §§136 et seq.; See, Penal §1387
6.2 Protective Orders	Penal §136.2; See, Penal §13835.5(b)(9)
7. Victim Notification	
7.1 of Compensation Program	Gov. §13968(b),(c); Penal §1191.2
7.2 of Witness Fees	
7.3 of Final Disposition	Penal §11116.10; Welf. & Inst. §742
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	Penal §13835.5(b)(6) (by victim assistance centers)
7.6 of Right to Participate in Sentencing Hearing	Penal §1191.1
7.7 of Parole Hearing	Penal §§3042(a), 3043
7.8 of Release of Offender	Penal §11155(a) (on work furlough)
7.9 of Escape of Offender	Penal §11155(b)
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	Penal §1203(b),(h)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	Penal §1191.1
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	Penal §3043
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	Penal §13835.5(b)(1)
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	Penal §§1407 et seq., 13835.5(b)(5)
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	Penal §§868, 868.5
11.3 Funding for Local Victim-Witness Groups	Penal §13835 et seq.
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	Penal §1203.09 (probation restrictions)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	Welf. & Inst. §§9390 et seq.
12.4 Abuse, Neglect, Exploitation - Protective Services	Welf. & Inst. §§15600, 15610, 15631
13. Sexual Assault Victims	
13.1 Payment for Medical Services	Gov. §13968.1; Health & Safety §§1491, 1492
13.2 Special Programs	Health & Safety §§1490 et seq.; Penal §13837 (counseling centers)
13.3 Child Sexual Assault Victim - Closed Proceedings	Penal §868.7(a)(1)
13.4 Child Sexual Assault Victim - Admissible Depositions	Penal §1346
14. Domestic Violence	
14.1 Protective Orders	Penal §§273.5, 273.6, 1000.6, 1000.7(a)(4)
14.2 Domestic Violence Shelters	Welf. & Inst. §§18290 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	Welf. & Inst. §15621 (adult abuse)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	Gov. §13968(d),(e),(f)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	Health & Safety §1493 (hospital records on sexual assault victims)
15.4 Sexual Assault Counselor Privilege	Ev. §1035 et seq.

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CHAPTER 5. INDEMNIFICATION OF PRIVATE CITIZENS

ARTICLE 1. VICTIMS OF CRIME

Sec.

- 13960.1. Indemnity fund renamed restitution fund; construction of statutory references [New].
13961.1. Emergency award procedures; duration of section.
13965. Types of assistance; duration of section.
13967.5. Persons to whom payable; failure to pay; forwarding abstract of judgment and information; action to recover [New].
13968.1. Examination of sexual assault victims; costs.

Cross References

Probation, see Penal Code § 1203.

Law Review Commentaries

Civil suits for sexual assault: Compensating rape victims. Camille LeGrand and Frances Leonard (1979) 8 Golden Gate L.Rev. 479.

Restraining order legislation for battered women: A reassessment. (1982) 16 U.S.F.L.Rev. 703.

Library References

Criminal Law § 1220.
C.J.S. Criminal Law § 2007.

Asterisks * * * indicate deletions by amendment

§ 13959. Declaration of public interest; application of article

It is in the public interest to * * * assist * * * residents of the State of California in obtaining restitution for the pecuniary losses they suffer as a direct result of criminal acts. This article shall govern the procedure by which crime victims may obtain restitution through compensation from the Restitution Fund.

(Amended by Stats.1982, c. 1378, p. —, § 1, urgency, eff. Sept. 24, 1982; Stats.1983, c. 1092, p. —, § 135, urgency, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

1982 Amendment. Deleted which they are unable to recoup without suffering serious financial hardship from the end of the section (see 1983 amendment note).

1983 Amendment. Rewrote the section, which previously read:

"It is in the public interest to indemnify and assist in the rehabilitation of those residents of the State of California who as the direct result of a crime suffer a pecuniary loss."

Law Review Commentaries

California's approach to third party liability for criminal violence. (1980) 13 Loyola L.Rev. (Calif.) 535.

Notes of Decisions

In general.

The state is not responsible for a proportionate share of attorney fees and costs for legal proceedings in which the state recovers money through a lien under § 13966 when the crime victim/claimant is the active litigant responsible for the recovery. 64 Ops.Atty.Gen. 540, 47-3-81.

§ 13960. Definitions

As used in this article:

(a) "Victim" shall mean any of the following residents of the State of California, or military personnel and their families stationed in California:

- (1) A person who sustains injury or death as a direct result of a crime * * *.
- (2) Anyone legally dependent for * * * support upon a person who sustains injury or death as a direct result of a crime * * *.
- (3) Any member of the family of a victim specified by paragraph (1) or any person in close relationship to such a victim, if that member or person was present during the actual commission of the crime, or any member or person herein described whose treatment or presence during treatment of the victim is medically required for the successful treatment of the victim.

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(4) In the event of a death caused by a crime * * *, any individual who legally assumes the obligation, or who voluntarily pays the medical or burial expenses incurred as a direct result thereof.

(b) "Injury" shall include physical or emotional injury, or both. However, this article shall not be construed to apply to emotional injury unless such an injury is incurred by a person who also sustains physical injury or threat of physical injury or by a member or person as defined in paragraph (3) of subdivision (a).

(c) "Crime * * *" shall mean a crime or public offense as defined in Section 15 of the Penal Code which results in injury to a resident of this state, including such a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death shall constitute a crime * * * for the purposes of this article, except that a crime * * * shall include any of the following:

(1) Injury or death, intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death * * * caused by a driver in violation of Section 20001, 23152, or 23153 of the Vehicle Code.

(3) Injury or death * * * caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime * * * in which he knowingly and willingly participated.

* * *

(d) "Pecuniary loss" shall mean any expenses for which the victim has not and will not be reimbursed from any other source. Losses shall include all of the following:

(1) The amount of medical or medical related expense, including psychological or psychiatric expenses, and including, but not * * * limited to, eyeglasses, hearing aids, dentures, or any prosthetic device * * * taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The loss of income or support that the victim has incurred or will incur as a direct result of an injury or death in an amount of more than one hundred dollars (\$100) or equal to 20 percent or more of the victims' net monthly income, whichever is less, except that in the case of persons on fixed incomes from retirement or disability who apply for assistance under this article, there shall be no minimum loss requirement.

(3) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

* * *

(e) "Board" shall mean the State Board of Control.

(f) "Victim centers" shall mean those centers as specified in Section 13835.2 of the Penal Code.

(Amended by Stats.1982, c. 52, p. —, § 1, urgency, eff. Feb. 18, 1982; Stats.1983, c. 1310, p. —, § 1.)

1982 Legislation

Section 45 of Stats.1982, c. 53, p. —, provides:

"(a) The provisions of Sections 2, 6, 7, and 10 of the Vehicle Code expressly apply to the provisions of this act, and, further, reference to an offense by section number is a reference to the provisions contained in that section, insofar as they are renumbered without substantive change by Chapter 939, 940, or 941 of the Statutes of 1981 or this act, and those provisions shall be construed as restatements and continuations thereof and not as new enactments.

"(b) Any reference in the provisions of the Vehicle Code to a prior offense of Section 23152 shall include a prior offense under Section 23102 or 23105, as those sections read prior to January 1, 1982.

"(c) Any reference in the provisions of the Vehicle Code to a prior offense of Section 23153 shall include a prior offense under Section 23101 or 23106 as those sections read prior to January 1, 1982.

"(d) The provisions of this section are declaratory of existing law."

§ 13960.1. Indemnity fund renamed restitution fund; construction of statutory references

The Indemnity Fund is hereby renamed the Restitution Fund. All existing statutory references to the Indemnity Fund shall hereafter be considered references to the Restitution Fund.

(Added by Stats.1983, c. 1092, p. —, § 135.1, urgency, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

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§ 13961. Application for assistance

(a) A victim of a crime . . . may file an application for assistance with the board . . .

(b) The board shall supply and make available an application form for this purpose. The form shall be in . . . one part, . . . in laymen's terms, . . . and shall be accompanied by . . . information including, but not limited to, the following . . .

(1) The eligibility of applicants, the types of claims covered and the maximum amount payable for such claims.

(2) Information explaining the procedure to be used to evaluate an applicant's claims.

(3) Other information pertinent to the applicant as deemed necessary by the board.

(4) Information about the existence and location of local victim centers.

(c) The period prescribed for the filing of an application for assistance shall be one year after the date of the crime, unless an extension is granted by the board, except that such period may be extended by the board . . . for good cause shown by the victim.

(d) The application for assistance shall be verified and shall contain the following:

(1) A description of the date, nature, and circumstances of the crime or public offense.

(2) A complete financial statement including but not limited to the cost of medical care or burial expense and the loss of wages or support the victim has incurred or will incur and the extent to which the victim has been or will be indemnified for these expenses from any source.

(3) When appropriate, a statement indicating the extent of any disability resulting from the injury incurred.

(4) An authorization permitting the board or a local victim center, or both, to verify the contents of the application.

(5) Such other information as the board may require.

(Amended by Stats. 1983, c. 601, p. . . § 1; Stats. 1983, c. 1310, p. . . § 2.)

1983 Amendments. Deleted from subd. (a): "of violence" after "crime"; deleted from the end of subd. (a), "provided that the victim was a resident of California at the time the crime was committed and either:"; deleted subds. (a)(1) and (a)(2); rewrote subd. (b); added subd. (b)(4); substituted, in subd. (c), "the board" for "the State Board of Control"; substituted, in subd. (d)(2), "will be indemnified" for "may be indemnified"; and substituted, in subd. (d)(4), "the board or a local victim center, or both" for "the State Board of Control".

Cross References

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Notes of Decisions

1. Validity

Ostrager v. State Bd. of Control (1979) 160 Cal.Rptr. 317, 99 C.A.3d 1, [main volume] appeal dismissed, 101 S.Ct. 53, 449 U.S. 807, 66 L.Ed.2d 10.

§ 13961.1. Emergency award procedure; duration of section

Text of section operative until Jan. 1, 1985.

(a) An emergency award shall be available for a victim of a crime . . . if any of the following occur as a result of the crime . . .

(1) The victim incurs loss of income or support.

3. Residency requirement

Ostrager v. State Bd. of Control (1979) 160 Cal.Rptr. 317, 99 C.A.3d 1, [main volume] appeal dismissed, 101 S.Ct. 53, 449 U.S. 807, 66 L.Ed.2d 10.

In respect to the definition of "resident of California" as used in the Victims of Violent Crimes Act (§ 13959 et seq.), addition by the state board of control of the word "lawful" as a modifier of the term "resident of California" for purposes of determining eligibility for compensation under the Act was clearly unwarranted, and thus two persons who entered United States illegally from Mexico, but who had lived and were employed in California for period of several years, and who were not under federal deportation order, were "residents of California" for purposes of Act. Cabral v. State Bd. of Control (1980) 169 Cal.Rptr. 604, 112 C.A.3d 1012.

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(2) The victim requires emergency medical treatment.

(b) Emergency award application forms shall be provided by the board . . . upon request of the applicant. The board shall make available the application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim. Disbursements of emergency awards funds shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to designated staff persons, who will use guidelines established by the board, to grant emergency awards. By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board or the victim's representative may take additional 10-day periods to verify the emergency award claim and make payment.

(d) If the applicant does not complete the application for a grant or, if, upon final disposition of the victim's claim under this article, it is found that the victim is not eligible for assistance from the board, the victim shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon final disposition of the victim's application, the board grants assistance to the claimant, the amount of the emergency award shall be deducted from the final award of compensation granted to the victim; and, if the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's application for assistance, before any appellate action is instituted. If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for denial.

(e) The amount of the emergency award shall be dependent upon the immediate needs of the victim, as evidenced by the victim's loss of income or support and losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. In no event shall the amount of the emergency award exceed one thousand dollars (\$1,000).

(f) The emergency award application shall require only the following:

(1) The name, address, and telephone number of the victim.

(2) A brief description of the nature and circumstances of the crime, including the date and location.

(3) The date the crime was reported to a law enforcement agency and the name and address of such agency.

(4) The name, address, and telephone number of the employer or self-employing entity; the loss of income or support to date and estimate of future loss.

(5) The nature of the injury and the name, address, and telephone number of medical providers and the cost of medical care incurred to date.

(6) A statement that in the event the victim is denied assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.

(7) The applicant's signature and a statement that the victim was a resident of the state on the date of the crime and that the information is supplied under penalty of perjury, a violation of which is punishable by six months in the county jail.

(8) The board shall report to the Legislature in 1984 on the advances which became uncollectable in 1982 and 1983.

This section shall remain in effect only until January 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends such date.

(Amended by Stats. 1981, c. 1084, p. 4177, § 1; Stats. 1983, c. 1310, p. . . § 3.)

For text of section operative Jan. 1, 1985, see § 13961.1, post.

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Repeal

Section 13961.1 by its own terms, is repealed Jan. 1, 1985.

1981 Amendment. In subd. (f), deleted former par. (6), renumbered former pars. (7) and (8) to be pars. (6) and (7), and added a new par. (8); and added a paragraph relating to the duration of the section.

Section 5 of Stats.1981, c. 1084, p. 4181, provides: "Sec. 5. Sections 2 and 4 of this act shall become operative on January 1, 1985."

Section 6 of Stats.1980, c. 1370 [quoted in main volume] was repealed by Stats.1981, c. 1084, § 6.

1983 Amendment. Rewrote subd. (a), which formerly read: "(a) An emergency award shall be available for a victim of a crime of violence if, as a result of the crime, the victim incurs loss of his or her income or support."; added subds. (a)(1) and (a)(2); substituted, in subd. (b), "the board" for "the State Board of Control"; added the fifth sentence of subd. (c); added the fourth sentence of subd. (d); and added, "nature of the injury and the" to subd. (f)(5).

§ 13961.1. Emergency award procedure

Text of section operative Jan. 1, 1985.

(a) An emergency award shall be available for a victim of a crime of violence if, as a result of the crime, the victim incurs loss of his or her income or support.

(b) Emergency award application forms shall be provided by the State Board of Control upon request of the applicant. The board shall make available such application forms through all means at its disposal.

(c) The board may grant an emergency award based solely on the application of the victim. Disbursements of emergency awards funds shall be made within 30 business days of application. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not qualify for an award for assistance under this article. The board may delegate authority to designated staff persons, who will use guidelines established by the board, to grant emergency awards.

(d) If the applicant does not complete the application for a grant or, if, upon final disposition of the victim's claim under this article, it is found that the victim is not eligible for assistance from the board, the victim shall reimburse the board for the emergency award pursuant to an agreed upon repayment schedule. If upon final disposition of the victim's application, the board grants assistance to the claimant, the amount of the emergency award shall be deducted from the final award of compensation granted to the victim; and, if the amount of the grant is less than the amount of the emergency award, the excess amount shall be repaid according to an agreed upon repayment schedule. Final disposition for the purposes of this section shall mean the final decision of the board with respect to the victim's application for assistance, before any appellate action is instituted.

(e) The amount of the emergency award shall be dependent upon the immediate needs of the victim, as evidenced by the victim's loss of income or support and losses incurred as a direct result of the crime before filing or reasonably anticipated during the first 90 days after the initial filing of an application. In no event shall the amount of the emergency award exceed one thousand dollars (\$1,000).

(f) The emergency award application shall require only the following:

- (1) The name, address, and telephone number of the victim.
- (2) A brief description of the nature and circumstances of the crime, including the date and location.
- (3) The date the crime was reported to a law enforcement agency and the name and address of such agency.
- (4) The name, address, and telephone number of the employer or self-employing entity, the loss of income or support to date and estimate of future loss.
- (5) The name, address, and telephone number of medical providers and the cost of medical care incurred to date.
- (6) A listing of creditors by name, address, and amount of debts, of whom applicant wishes the board to request forbearance of collections.
- (7) A statement that in the event the victim is denied assistance under this article or the final award is less than the emergency award, the applicant will be required to repay the excess amount.
- (8) The applicant's signature and a statement that the victim was a resident of the state on the date of the crime and that the information is supplied under penalty of perjury, violation of which is punishable by six months in the county jail.

(Added by Stats.1981, c. 1084, p. 4178, § 2, operative Jan. 1, 1985.)

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§ 13961.2. Payment of emergency awards; limitation

A sum not to exceed 15 percent of the amount appropriated annually to pay victims of crimes * * * may be withdrawn from the Restitution Fund, to be used as a revolving fund by the board * * * for the payment of emergency awards made pursuant to Section 13961.1.

(Amended by Stats.1983, c. 1310, p. —, § 4.)

1981 Legislation.

Repeal of this section by Stats.1980, c. 1370, § 6 [see main volume] operative Dec. 31, 1981, was repealed by Stats.1981, c. 1084, § 6, leaving § 13961.2 in full force and effect.

1983 Amendment. Added "of violence" after "crimes"; changed "Indemnity Fund" to "Restitution Fund"; and changed "State Board of Control" to "the board".

§ 13961.3. Victim compensation form committee; membership

A Victim Compensation Form Committee shall be established by the board to develop or revise, or both, the application form described in this article. The committee shall consist of one representative from and appointed by the board and two representatives from local victim centers appointed by the executive director of the Office of Criminal Justice Planning.

(Amended by Stats.1983, c. 1310, p. —, § 5.)

1983 Amendment. Added "or revise, or both" after "to" and substituted "local victim centers" for "local victim development"; substituted "this article" for "Section 13961";

§ 13961.5. Renumbered § 13968.1 and amended by Stats.1983, c. 1310, p. —, § 6

§ 13962. Review, verification, and consideration of application

(a) The staff of the board shall appoint a clerk to review all applications for assistance in order to insure that they are complete. If the application is not complete, it shall be returned to the victim with a brief statement of the additional information required. The victim, within 30 days of receipt thereof, may either supply the additional information or appeal such action to the board which shall review the application to determine whether or not it is complete.

(b) If the application is accepted, it shall be verified promptly * * * by the staff of the board * * *. The verification process shall include sending supplemental forms to all hospitals, physicians, law enforcement officials and other interested parties involved, verifying the treatment of the victim, circumstances of the crime, amounts paid or received by or for the victim and other pertinent information as may be deemed necessary by the board. Verification forms shall be provided by the board and shall be returned to the board within 10 business days. The board shall include on the verification forms reference to this section with respect to the prompt return of the verification forms. The board, thereupon, shall consider the application at a hearing at a time and place of its choosing. The board shall notify all interested persons not less than five days prior to the date of the hearing. If the application is accepted by the board as fully verified, the board shall process the claim within 90 days, including payment on an approved claim.

(c) The victim shall cooperate with the staff of the board or the local victim center in the verification of the information contained in the application. Failure * * * to cooperate shall be reported to the board, which, in its discretion, may reject the application on this ground alone.

(d) Hearings shall be held in various locations with the frequency necessary to provide for the speedy adjudication of the applications. If the applicant's presence is required at the hearing, the board shall consider convenience to the applicant in scheduling the locations. If necessary, the board shall delegate the hearing of applications to hearing examiners.

(e) Designated local victim centers shall be authorized to verify claims processed by such centers pursuant to conditions stated in subdivision (b).

(Amended by Stats.1983, c. 1310, p. —, § 7.)

1983 Amendment. Substituted, in the first sentence of subd. (b), "verified promptly" for "promptly verified"; in the same sentence, substituted "the board" for "the State Board of Control"; added the seventh sentence of subd. (b); substituted, in subd. (c), "the board or the local

victim center" for "the State Board of Control"; inserted the second sentence of subd. (d); added subd. (e); and made other, nonsubstantive, changes in punctuation and wording.

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§ 13962.5. Training sessions for local center personnel; standardized verification procedures for local victim centers; cooperation

(a) The board and its staff shall cooperate with the Office of Criminal Justice Planning and such local victim centers as specified in Section 13835.2 of the Penal Code, in conducting training sessions for local center personnel and shall cooperate in the development of standardized verification procedures to be used by the local victim centers in the state.

(b) The board and its staff shall cooperate with local victim centers in disseminating standardized board policies and findings as they relate to the local centers.

(Amended by Stats.1983, c. 1310, p. —, § 8.)

1983 Amendment. Inserted subdivision designation (a) at the beginning of the section; substituted, in subd. (a), "local victim centers as specified in Section 13835.2 of the Penal Code" for "local victim witness programs as designated in Section 13967"; in the same subdivision, substituted "local center" and "local victim centers" for "local program" and "local programs"; added, to subd.

(a), "verification" between "standardized" and "procedures"; and added subd. (b).

Library References

Criminal Law § 1220.
C.J.S. Criminal Law § 2007.

§ 13963. Hearing

(a) At the hearing, the board shall:

(1) Instruct its staff, prior to the start of the proceedings, to brief those claimants present on the rules, regulations and any other procedures and guidelines used by the board at such hearings.

(2) Review the application for assistance and the report prepared thereon and any other evidence obtained as a result of the verification.

(3) Receive such other evidence as the board finds necessary or desirable properly to evaluate the application.

(b) If the victim or the victim's representative chooses not to appear at the hearing, the board may act solely upon the application for assistance, the staff's report, and such other evidence as appears in the record.

(Amended by Stats.1983, c. 1310, p. —, § 9.)

1983 Amendment. Substituted, at the end of subd. (a)(2), "verification" for "investigation"; and added, to subd. (b), "or the victim's representative".

§ 13964. Approval of application; ineligibility for assistance; criminal complaint; death of applicant

(a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim incurred an injury which resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if . . . the board finds that . . . denial is appropriate because of the nature of the victim's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application . . .

(c) No victim shall be eligible for assistance under the provisions of this article under any of the following circumstances:

(1) The board finds that the victim or the person whose injury or death gave rise to the application knowingly and willingly participated in the commission of the crime . . .

(2) The victim or the person whose injury or death gave rise to the application failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(d) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (b) or (c). Moreover, no application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (b) or (c).

(e) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to the provisions of this article in the event of the death of the applicant.

(Amended by Stats.1982, c. 1378, p. —, § 2, urgency, eff. Sept. 24, 1982; Stats.1983, c. 1310, p. —, § 10.)

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1982 Amendment. In introductory paragraph deleted "which the victim is unable to recoup without suffering serious financial hardship"; in subd. (a) deleted a colon, deleted designation of subd. (a)(1) as such, substituted "the" for "The" preceding "board finds that", substituted a period for "; or", and deleted former subd. (a)(2).

1983 Amendment. Added subdivision designation (a) at the beginning of the first paragraph; redesignated

former subds. (a) and (b) as subds. (b) and (c); substituted, at the end of subd. (c), "under any of the following circumstances:" for "if:"; substituted a period for a semicolon and the word "or" at the end of subd. (c)(1); and added subds. (d) and (e).

§ 13965. Types of assistance; duration of section

Text of section operative until Jan. 1, 1985.

(a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a cash payment to or on behalf of the victim equal to the pecuniary loss attributable to medical or medical-related expenses directly resulting from the injury . . .

(2) Authorize a cash payment to the pecuniary loss resulting from loss of wages or support directly resulting from the injury . . .

(3) Authorize cash payments . . . to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars (\$23,000).

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit of twenty-three thousand dollars (\$23,000).

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(f) The maximum cash payments authorized in . . . subdivision (a) shall be increased to forty-six thousand dollars (\$46,000) if federal funds for such increases are available.

This section shall remain in effect only until January 1, 1985, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1985, deletes or extends such date.

(Amended by Stats.1981, c. 1084, p. 4180, § 3; Stats.1983, c. 1310, p. —, § 11.5.)

For text of section operative Jan. 1, 1985, see § 13965, post.

Repeal

Section 13965, by its own terms, is repealed Jan. 1, 1985.

1981 Amendment. Added a paragraph relating to the duration of the section.

1983 Amendment. Deleted, from subds. (a)(1) and (a)(2), the words "but not to exceed ten thousand dollars (\$10,000)"; deleted, from subd. (a)(3), "not to exceed three thousand dollars (\$3,000)"; added subd. (a)(4); designated the former second paragraph of subd. (b) as subd. (c); designated the second paragraph of former subd. (c), now subd. (d), as subd. (e); redesignated former subds. (c) and (d) as subds. (d) and (f), respectively; substituted, at the end of subd. (c), "the maximum limit of twenty-three thousand dollars (\$23,000)" for "the maximum limits provided in paragraphs (1), (2), and (3) of

subdivision (a)"; and rewrote subd. (f), formerly subd. (d), which formerly read:

"(d) The maximum cash payments authorized in paragraphs (1) and (2) of subdivision (a) shall be increased to twenty thousand dollars (\$20,000) and the attorney's fees authorized in subdivision (c) of this section shall be increased to one thousand dollars (\$1,000), if federal funds for such increases are available."

Amendment of this section by § 11 of Stats.1983, c. 1310, p. —, failed to become operative under the provisions of § 15 of that Act.

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§ 13965. Types of assistance

Text of section operative Jan. 1, 1985.

(a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any of the following actions:

(1) Authorize a cash payment to or on behalf of the victim equal to the pecuniary loss attributable to medical or medical-related expenses directly resulting from the injury but not to exceed ten thousand dollars (\$10,000);

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury, but not to exceed ten thousand dollars (\$10,000);

(3) Authorize cash payments not to exceed three thousand dollars (\$3,000) to or on behalf of the victim for job training or similar employment-oriented rehabilitative services.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limits provided in paragraphs (1), (2), and (3) of subdivision (a).

(c) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less.

No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(d) The maximum cash payments authorized in paragraphs (1) and (2) of subdivision (a) shall be increased to twenty thousand dollars (\$20,000) and the attorney's fees authorized in subdivision (c) of this section shall be increased to five thousand dollars (\$5,000) and one thousand dollars (\$1,000), respectively, if federal funds for such increases are available.

(Added by Stats.1981, c. 1084, p. 4180, § 4, operative Jan. 1, 1985.)

For text of section operative until Jan. 1, 1985, see § 13965, ante.

Library References

Criminal Law § 1220.
C.J.S. Criminal Law § 2007.

§ 13966. Subrogation; lien; disposition of proceeds

Notes of Decisions

1. In general

The state is not responsible for a proportionate share of attorney fees and costs for legal proceedings in which

the state recovers money through a lien under this section when the crime victim/claimant is the active litigant responsible for the recovery. 64 Ops.Atty.Gen. 540, 7-3-81.

§ 13967. Restitution fine; imposition; deposit; appropriation

(a) Upon a person being convicted of any crime in the State of California, the court shall, in addition to any other penalty provided or imposed under the law, order the defendant to pay a restitution fine in the form of a penalty assessment in accordance with Section 1464 of the Penal Code. If the person is convicted of one or more felony offenses, the court shall impose a separate and additional restitution fine of not less than one hundred dollars (\$100) and not more than ten thousand dollars (\$10,000). In setting the amount of the fine for felony convictions, the court shall consider any relevant factors including, but not limited to, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, and the extent to which others suffered losses as a result of the crime. Such losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Except as provided in Section 1202.4 of the Penal Code, under no circumstances shall the court fail to impose the separate and additional restitution fine required by this section.

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(b) The fine imposed pursuant to this section shall be deposited in the Restitution Fund in the State Treasury. Notwithstanding Section 13340, the proceeds in the Restitution Fund are hereby continuously appropriated to the board for the purpose of indemnifying persons filing claims pursuant to this article. However, the funds appropriated pursuant to this section for administrative costs of the State Board of Control shall be subject to annual review through the State Budget process.

(Amended by Stats.1981, c. 102, p. 710, § 54, urgency, eff. June 28, 1981; Stats.1981, c. 166, p. 967, § 3, urgency, eff. July 12, 1981; Stats.1983, c. 1092, p. —, § 135.2, urgency, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

1981 Amendments. Deleted in subd. (b) "to be divided equally"; inserted in subd. (b) funding for programs provided pursuant to articles 3 and 4 of Chapter 4 of title 6 of part 4 of the Penal Code; and deleted a provision repealing this section on Jan. 1, 1982.

Section 3 of Stats.1979, c. 713, p. 2202, quoted under this section in the Main Volume, was repealed by Stats. 1981, c. 166, p. 973, § 17, urgency, eff. July 12, 1981.

Former § 13967, added by Stats.1979, c. 713, p. 2202, § 2, amended by Stats.1980, c. 530, p. 1475, § 3.1, was repealed by Stats.1981, c. 102, p. 711, § 55, urgency, eff.

that the defendant has the present ability to pay a fine and finds that the economic impact of the fine upon the defendant's dependents will not cause such dependents to be dependent on public welfare the court shall, in addition to any other penalty, order the defendant to pay a fine commensurate with the offense committed, and with the probable economic impact upon the victim, of at least ten dollars (\$10), but not to exceed ten thousand dollars (\$10,000).

"(b) The fine imposed pursuant to this section shall be deposited in the Indemnity Fund in the State Treasury, the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to this article and to provide assistance to established local comprehensive programs for victims and witnesses, including but not limited to, pilot local assistance centers for victims and witnesses established pursuant to the provisions of Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4 of the Penal Code, and to provide funding for the programs provided pursuant to Article 3 (commencing with Section 13836) of Chapter 4 of Title 6 of Part 4 of the Penal Code, and Article 4 (commencing with Section 13837) of Chapter 4 of Title 6 of Part 4 of the Penal Code.

"(c) It is the intent of the Legislature that funds appropriated pursuant to this section for local assistance centers for victims and witnesses shall be in addition to any funds appropriated as provided in Section 13835.8 of the Penal Code.

"(d) Funds appropriated pursuant to this section shall be made available through the Office of Criminal Justice Planning to those public or private nonprofit programs for the assistance of victims and witnesses which:

"(1) Provide comprehensive services to victims and witnesses of all types of crime. It is the intent of the Legislature to make funds available only to programs which do not restrict services to victims and witnesses of a particular type or types of crimes.

"(2) Are recognized by the county board of supervisors as the major provider of comprehensive services to such victims and witnesses.

"(3) Are selected by the county board of supervisors as the eligible program to receive such funds.

June 28, 1981; Stats.1981, c. 166, p. 968, § 4, urgency, eff. July 12, 1981.

Former § 13967, added by Stats.1980, c. 530, p. 1475, § 3.5, amended by Stats.1981, c. 102, p. 711, § 56, eff. June 28, 1981, was repealed by Stats.1981, c. 166, p. 968, § 5, eff. July 12, 1981.

1983 Amendment. Rewrote the section, which previously read:

"(a) Upon a person being convicted of a crime of violence committed in the State of California resulting in the injury or death of another person, if the court finds

"(4) Assist victims of violent crimes in the preparation and presentation of their claims to the State Board of Control for indemnification pursuant to this article.

"(5) Cooperate with the State Board of Control in obtaining and verifying data required by this article."

Derivation: Former § 13967 added by Stats.1980, c. 530, p. 1475, § 3.5, amended by Stats.1981, c. 102, p. 711, § 56.

Former § 13967 added by Stats.1979, c. 713, p. 2202, § 2, amended by Stats.1980, c. 530, p. 1475, § 3.1.

Cross References

Probation, see Penal Code 1203.

Law Review Commentaries

Monetary remedies for the victims of crime: Assessing the role of the criminal courts. Alan T. Harland (1982) 30 U.C.L.A. Law Rev. 52.

Library References

Fines § 11/2.
C.J.S. Fines § 1 et seq.

Notes of Decisions

Construction with other laws: 2

1. In general

The clerk of the court is responsible for the collection of penalty assessments levied against criminal defendants for the benefit of crime victim programs. 65 Ops.Atty.Gen. 581, 10-12-82.

2. Construction with other laws

Pen.C. § 1203.1, which requires payment into a county's general fund of all fines that are collected by the county probation officer as a condition or term of probation, does not apply to penalty assessments levied pursuant to this section, Pen.C. § 13521, relating to the Peace Officers' Training Fund, and Veh.C. § 42050, relating to the driver training and peace officer training funds. 79 Ops.Atty.Gen. 322, 5-16-79.

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§ 13967.5. Persons to whom payable; failure to pay; forwarding abstract of judgment and information; action to recover

(a) The restitution fine imposed pursuant to subdivision (a) of Section 13967 shall be payable to the clerk of the court, the judge if there be no clerk at the time of judgment, the probation officer, or any other person responsible for the collection of criminal fines. If the defendant is unable or otherwise fails to pay such fine in a felony case and there is an amount unpaid of one thousand dollars (\$1,000) or more within 60 days after the imposition of sentence, or in a case in which probation is granted, within the period of probation, the clerk of the court, probation officer, or other person to whom the fine is to be paid shall forward to the Controller the abstract of judgment along with such information which may be relevant to the present and future location of the defendant and his or her assets, if any, and any verifiable amount which the defendant may have paid to the victim as a result of the crime.

(b) A restitution fine shall be deemed a debt of the defendant owing to the state for the purposes of Sections 12418 and 12419.5 of the Government Code, excepting any amounts the defendant has paid to the victim as a result of the crime. Upon request by the Controller, the district attorney of a county or the Attorney General may take any necessary action to recover amounts owing on a restitution fine. The amount of the recovery shall be increased by a sum sufficient to cover any costs incurred by any state or local agency in the administration of this section. The remedies provided by this subdivision are in addition to any other remedies provided by law for the enforcement of a judgment. (Added by Stats.1983, c. 954, p. —, § 1.)

§ 13968. Rules and regulations; notice of provisions of chapter; reports and information

(a) The board * * * is hereby authorized to make all needful rules and regulations consistent with the law for the purposes of carrying into effect the provisions of this article.

(b) It shall be the duty of every hospital licensed under the laws of this state to display prominently in its emergency room posters giving notification of the existence and general provisions of this chapter, and the existence and locations of local victim centers. The board, in cooperation with local victim centers, shall set standards for the location of such a display and shall provide posters, application forms, and general information regarding the provisions of this chapter to each hospital and physician licensed to practice in the State of California.

(c) It shall be the duty of every local law enforcement agency to inform victims of * * * crimes of the provisions of this chapter, of the existence of local victim centers, and in counties where no local victim center exists, to provide application forms to victims who desire to seek assistance pursuant to this article. The board shall provide application forms and all other documents which local law enforcement agencies and victim centers may require to comply with this section. The board, in cooperation with local victim centers shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with the board a description of the procedures adopted by each agency to comply.

(d) Notwithstanding any other provision of law, every law enforcement agency in the state shall provide to the board or to the designated local victim centers, upon request, a complete copy of the report regarding the incident and any supplemental reports involving the crime, public offense, or incident giving rise to a claim, for the specific purpose of the submission of a claim or the determination of eligibility to submit a claim filed pursuant to this article.

(e) The law enforcement agency supplying the information may, at its discretion, withhold the names of witnesses or informants from the board, if the release of such names would be detrimental to the parties or to an investigation currently in progress.

(f) Notwithstanding any other provision of law, every state agency, department, division, board, or commission, upon receipt of a copy of a release signed in accordance with the Information Practices Act of 1977 by the applicant or other authorized representative, shall provide to the board or local victim center the information necessary to complete the verification of an application filed pursuant to this article.

(Amended by Stats.1983, c. 1310, p. —, § 12.)

1983 Amendment. Substituted, in subd. (a), "The board" for "The State Board of Control"; added, to the first sentence of subd. (b), "and the existence and locations of local victim centers"; added, to the second sentence of subd. (b), "in cooperation with local victim centers"; deleted, from the first sentence of subd. (c), "violent" before "crimes"; added, to the same sentence, "of the existence of local victim centers" and "in counties where no local victim center exists"; added, to the

second sentence of subd. (c), "and victim centers"; added, to the third sentence of subd. (c), "in cooperation with local victim centers"; added, to the sentence comprising subd. (d), "or to the designated local victim centers" and "for the specific purpose of the submission of a claim or the determination of eligibility to submit a claim"; added, to the sentence comprising subd. (f), "or local victim center"; and made other, nonsubstantive, changes in punctuation and wording.

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§ 13968.1. Examination of sexual assault victims; costs

No costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sexual assault, when such an examination is performed for the purposes of gathering evidence for possible prosecution, shall be charged directly or indirectly to the victim of such assault. Those costs shall be treated as local costs and charged to the appropriate local governmental agency as follows:

(a) If the treatment or services are provided at a county or city hospital, or hospital district facility, the county shall pay the expenses.

(b) If the treatment or services are performed at a private hospital, the expenses shall be paid by the local governmental agency in whose jurisdiction the alleged offense was committed.

(Formerly § 13961.5, added by Stats.1974, c. 1091, p. 2319, § 1. Renumbered § 13968.1 and amended by Stats.1983, c. 1310, p. —, § 6.)

1983 Amendment. Made no substantive changes in the text of the section.

§ 13969. Payment of claims

Claims under this article shall be paid from the Restitution Fund.

(Amended by Stats.1983, c. 1092, p. —, § 135.3, urgency, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

§ 13969.1. Decisions of board; notice; reconsideration; mandamus petitions; time

(a) The decisions of the board shall be in writing. Copies of the decisions shall be delivered to the applicant or to his representative personally or sent to them by mail.

(b) The board itself may order a reconsideration of all or part of the application for assistance on its own motion or on written request of the applicant or his representative. The board may not grant more than one such request on any application for assistance. The board shall not consider any such request filed with the board more than 30 days after the personal delivery or 60 days after the mailing of the original decision.

(c) Judicial review of a final decision made pursuant to this article may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the board. Such petition shall be filed as follows:

(1) Where no request for reconsideration is made, within 30 days of personal delivery or within 60 days of the mailing of the board's decision on the application for assistance.

(2) Where a timely request for reconsideration is filed and rejected by the board, within 30 days of personal delivery or within 60 days of the mailing of the notice of rejection.

(3) Where a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 days of personal delivery or within 60 days of the mailing of the final decision on the reconsidered application.

(Amended by Stats.1983, c. 1310, p. —, § 14.)

1983 Amendment. Deleted the second sentence of subd. (a) relating to legislative intent.

Another § 13969.1, added by Stats.1977, c. 521, p. 1665, § 5, was repealed by Stats.1983, c. 1310, p. —, § 13.

* * *

CALIFORNIA

Article 2

CITIZENS BENEFITING THE PUBLIC

Sec.

13970. Direct action of citizens as benefiting public; indemnification in certain cases.
13971. Private citizen defined.
13972. Claim for indemnification; filing; contents.
13973. Hearing; notice; evidence.
13974. Rules and regulations.

*Article 2 was added by Stats.1969, c. 1111, p. 2168, § 3.5;
Stats.1969, c. 1431, p. 2938, § 3.5.*

§ 13970. Direct action of citizens as benefiting public; indemnification in certain cases

Direct action on the part of private citizens in preventing the commission of crimes against the person or property of others, or in apprehending criminals, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, benefits the entire public. In recognition of the public purpose served, the state may indemnify such citizens, their surviving spouses, their surviving children, and any persons dependent upon such citizens for their principal support in appropriate cases for any injury, death, or damage sustained by such citizens, their surviving spouses, their surviving children, and any persons dependent upon such citizens for their principal support as a direct consequence of such meritorious action to the extent that they are not compensated for the injury, death, or damage from any other source. A claim shall be denied if an award has been made under Article 1 (commencing with Section 13960) of this chapter for the same incident.

§ 13971. Private citizen defined

As used in this article, "private citizen" means any natural person other than a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of such employment.

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§ 13972. Claim for indemnification; filing; contents

In the event a private citizen incurs personal injury or death or damage to his or her property in preventing the commission of a crime against the person or property of another, in apprehending a criminal, or in materially assisting a peace officer in prevention of a crime or apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, the private citizen, his or her surviving spouse, his or her surviving children, a person dependent upon such citizen for his or her principal support, or a public safety or law enforcement agency acting on behalf of any of the above may file a claim with the State Board of Control for indemnification to the extent that the claimant is not compensated from any other source for such injury, death, or damage. The claim shall generally show:

(a) The date, place and other circumstances of the occurrence or events which gave rise to the claim;

(b) A general description of the activities of the private citizen in prevention of a crime, apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe;

(c) The amount or estimated amount of the injury, death, or damage sustained for which the claimant is not compensated from any other source, insofar as it may be known at the time of the presentation of the claim;

(d) Such other information as the Board of Control may require.

The claim shall be accompanied by a corroborating statement and recommendation from the appropriate state or local public safety or law enforcement agency.

§ 13973. Hearing; notice; evidence

Upon presentation of any such claim, the Board of Control shall fix a time and place for the hearing of the claim, and shall mail notices thereof to interested persons or agencies. At the hearing, the board shall receive recommendations from public safety or law enforcement agencies, and evidence showing:

(a) The nature of the crime committed by the apprehended criminal or prevented by the action of the private citizen, or the nature of the action of the private citizen in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, and the circumstances involved;

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(b) That the actions of the private citizen substantially and materially contributed to the apprehension of a criminal, the prevention of a crime, or the rescuing of a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe;

(c) That as a direct consequence, the private citizen incurred personal injury or damage to property or died;

(d) The extent of such injury or damage for which the claimant is not compensated from any other source;

(e) Such other evidence as the board may require.

If the board determines, on the basis of a preponderance of such evidence, that the state should indemnify the claimant for the injury, death, or damage sustained, it shall approve the claim for payment. In no event shall a claim be approved by the board under this article in excess of ten thousand dollars (\$10,000).

In addition to any award made under this article, the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award. No attorney shall charge, demand, receive, or collect for services rendered in connection with any proceedings under this article any amount other than that awarded as attorney's fees under this section. Claims approved under this article shall be paid from a separate appropriation made to the State Board of Control in the Budget Act and as such claims are approved by the board.

§ 13974. Rules and regulations

The Board of Control is hereby authorized to make all needful rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this article.

* * *

ARTICLE 2. VICTIMS OF CRIME

Sec.

- 29631. Indemnification of victims of crime; public purpose.
- 29632. Establishment of program for reimbursement by county or city; grounds.
- 29633. Restrictions and conditions.
- 29634. Procedures for determination of entitlement to reimbursement.
- 29635. Subrogation.
- 29636. Fine imposed in addition to penalty for conviction of crime; determination by court.
- 29637. Reimbursement for losses; resolution.

Article 2 was added by Stats.1971, c. 1627, p. 3507, § 2.

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§ 29631. Indemnification of victims of crime; public purpose

The Legislature hereby declares that it serves a public purpose, and is of benefit to the state and to every county and city in the state, to indemnify those innocent residents of the State of California whose property has been injured or destroyed as a result of the acts specified in Section 29632.

(Added by Stats.1971, c. 1627, p. 3507, § 2. Amended by Stats.1978, c. 313, p. 653, § 1.)

§ 29632. Establishment of program for reimbursement by county or city; grounds.

The legislative body of a county or of a city may establish a program which provides for the reimbursement of any innocent resident of the county or city, as the case may be, whose property is or has been at any time subsequent to a date designated by the legislative body injured or destroyed as the consequence of:

(a) An act of a peace officer in the detection of crime or the apprehension or arrest of any person for any public offense; or

(b) An act of a person in resisting or avoiding arrest.

(Added by Stats.1971, c. 1627, p. 3507, § 2. Amended by Stats.1978, c. 313, p. 654, § 2.)

1978 Amendment. Deleted a requirement that the victim be "needy".

§ 29633. Restrictions and conditions

The legislative body may impose such other restrictions and conditions as it finds advisable and which do not impair the constitutional rights of any person.

(Added by Stats.1971, c. 1627, p. 3507, § 2.)

§ 29634. Procedures for determination of entitlement to reimbursement

In establishing a program pursuant to this article the legislative body may provide for the procedures to determine whether or not a claimant is entitled to reimbursement.

(Added by Stats.1971, c. 1627, p. 3507, § 2.)

§ 29635. Subrogation

If a claim is paid under this article the county or city shall be subrogated to the rights of the claimant to whom such claim was paid against any person injuring or destroying the property of the claimant for which payment was made to the extent of the payment of the claim. The county or city may recover the amount of the claim paid in a separate action, or may intervene in an action brought by the claimant.

(Added by Stats.1971, c. 1627, p. 3508, § 2.)

§ 29636. Fine imposed in addition to penalty for conviction of crime; determination by court

Upon conviction of any person of a crime which has resulted in the injury or destruction of property for which reimbursement is provided for under a program established pursuant to this article, in addition to the requirements of Section 13964 the court shall take into consideration the defendant's economic condition, and unless it finds such action will cause the family of the defendant to be dependent upon public welfare, may, in addition to any other penalty, order the defendant to pay a fine in an amount sufficient to pay for the replacement or repair of the property injured or destroyed but not more than the fair market value of such property. That portion of the fine not subject to the provisions of Section 13964 shall be appropriated to the county or city whose legislative body has established such a program and shall be used to pay claims which have been allowed pursuant to provisions adopted by the legislative body pursuant to this article.

If the legislative body of a county and the legislative body of a city therein, have both established such a program, such portion of the fine shall be paid to the county or city which actually has paid the claimant.

(Added by Stats.1971, c. 1627, p. 3508, § 2.)

§ 29637. Reimbursement for losses; resolution

For the purposes of this article, the legislative body of a county or a city may by resolution determine that a resident may be reimbursed for any losses not otherwise covered by insurance.

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CHAPTER 4. CLAIMS

ARTICLE 1. FILING AND APPROVAL

Sec.

29707.1. Claims of supervisors; counties having auditor system; allowance by auditor; payment; resolution.

§ 29700. Applicability of chapter

Notes of Decisions

3. Law governing

Fact that there are no statutory provisions for notice and hearing before the livestock-in-lieu tax becomes final,

due process is however satisfied where the Government Code authorizes refunds under provisions for claims against counties. 54 Ops.Atty.Gen. 177, 9-9-71.

§ 29701. Time for presentation

The board shall not consider a claim unless it is presented not less than three days or, if prescribed by ordinance, five days prior to the date of the meeting of the board at which it is considered. Notwithstanding the foregoing, the board may provide by ordinance that this section shall not apply to any claims or to specified classes of claims.

(Amended by Stats.1970, c. 193, p. 448, § 2.)

§ 29706. Effect of failure to use prescribed form

Failure of a claimant to use a form prescribed by the board pursuant to Section 29705 is not a defense to a suit against the county on a claim for which Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 requires a claim to be presented. (Amended by Stats.1982, c. 454, p. —, § 75.)

California Penal Code

§ 12024. Restitution fine; felony convictions; waiver; probation

(a) In any case in which a defendant is convicted of a felony, the court shall order the defendant to pay a restitution fine as provided in subdivision (a) of Section 13967 of the Government Code. Such restitution fine shall be in addition to any other penalty or fine imposed and shall be ordered regardless of the defendant's present ability to pay. However, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of that portion of the restitution fine which exceeds the prescribed minimum amount. When such a waiver is granted, the court shall state on the record all reasons supporting the waiver.

(b) Any case in which the defendant is ordered to pay restitution to a victim as a condition of probation, the order to pay the restitution fine may be stayed pending the successful completion of probation, and thereafter the stay shall become permanent.

(c) Upon the revocation of probation and the imposition of sentence, a court shall, in any case, impose a restitution fine as provided in subdivision (a). Any payments of restitution made pursuant to subdivision (b) shall be offset against the fine imposed pursuant to this subdivision.

(Added by Stats.1983, c. 1092, p. —, § 320.1, urgency, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

1983 Legislation.

Inapplicability of the subordination provision of Stats. 1983, c. 1092, § 423.5, to this section, see note under Bus. & Prof.C. § 556.

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§ 12025. Repealed by Stats.1982, c. 1413, p. —, § 4

§ 12023. Probation; conditional sentence; pre-sentence investigation, report and recommendations; mitigating circumstances; hearing by court; power to grant probation; summary disposition of misdemeanors; offenses for which probation may not be granted; release to another state.

(a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) In every case in which a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her determination of whether the defendant is a person who is required to pay a fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report for the court's consideration whether the court shall require, as a condition of probation, restitution to the victim or to the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 18959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a recommendation thereof, and if so, the amount thereof, and the means and manner of payment. The report shall be made available to the court and the prosecuting and defense attorney at least nine days prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorney which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered such report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be subserved by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) In every case in which a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If such a case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert such information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his arrest, any person who has been convicted of arson, robbery, burglary, burglary with explosives, rape with force or violence, murder, assault with intent to commit

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(h) In any case in which a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer shall obtain and include in such report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain such a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense.

§ 1203.04. Probation; restitution or community service as condition

(a) In every case where a person is convicted of a crime and is granted probation, the court shall require, as a condition of probation, that the person make restitution as follows:

(1) To the victim, if the crime involved a victim. For purposes of this section, "victim" shall include the immediate surviving family of the actual victim in homicide cases. Payments shall be made to the Restitution Fund to the extent the victim has received assistance pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(2) To the Restitution Fund, if the crime did not involve a victim.

(b) If the court finds, and states its reasons for the finding on the record, that there are compelling and extraordinary reasons why restitution should not be required as provided in subdivision (a), the court shall require, as a condition of probation, that the person perform specified community service.

(c) The court may avoid imposing the requirement of community service as a condition of probation only if it finds, and states its reasons for the finding on the record, that there are compelling and extraordinary reasons not to require community service in addition to its finding as to why restitution pursuant to subdivision (a) should not be required.

(d) For purposes of paragraph (1) of subdivision (a), "restitution" means full or partial payment for the value of stolen or damaged property, medical expenses, and wages or profits lost due to injury or to time spent as a witness or in assisting the police or prosecution, which losses were caused by the defendant as a result of committing the crime for which he or she was convicted. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

Restitution collected pursuant to this section shall be credited to any other judgments obtained by the victim against the defendant arising out of the crime for which the defendant was convicted.

(e) For purposes of paragraph (2) of subdivision (a), the amount of restitution to be paid to the Restitution Fund shall be set at the discretion of the court and commensurate with the seriousness of the offense; shall be at least one hundred dollars (\$100) but shall not exceed ten thousand dollars (\$10,000) if the person is convicted of a felony; and shall be at least ten dollars (\$10) but not more than one thousand dollars (\$1,000) if the person is convicted of a misdemeanor.

(f) Nothing in this section shall be construed to limit the authority of the court to grant or deny probation or provide conditions of probation.

(Added by Stats.1983, c. 568, p. —, § 2.)

§ 1203.09. Crimes against persons 60 years of age or older, blind persons, paraplegics or quadriplegics; denial of probation and suspension of sentence

(a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who commits or attempts to commit one or more of the crimes listed in subdivision (b) against a person who is 60 years of age or older; or against a person who is blind, a paraplegic, or a quadriplegic, and such disability is known or reasonably should be known to the person committing the crime; and who during the course of the offense inflicts great bodily injury upon such person.

(b) Subdivision (a) applies to the following crimes:

(i) Murder.

(ii) Assault with intent to commit murder, in violation of Section 217.

(iii) Robbery, in violation of Section 211.

(iv) Kidnapping, in violation of Section 207.

(v) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(vi) Burglary of the first degree, as defined in Section 460.

(vii) Rape by force or violence, in violation of subdivision (2) of Section 261.

(viii) Assault with intent to commit rape, sodomy, or robbery, in violation of Section 220.

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(c) The existence of any fact which would make a person ineligible for probation under either subdivision (a) or (f) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) As used in this section "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(e) This section shall apply in all cases, including those cases where the infliction of great bodily injury is an element of the offense.

(f) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of having committed one or more of the following crimes against a person who is 60 years of age or older: assault with a deadly weapon or instrument, battery which results in physical injury which requires professional medical treatment, robbery, or mayhem. (Amended by Stats.1983, c. 993, p. —, § 1, urgency, eff. Sept. 22, 1983.)

1983 Amendment. Inserted the reference in subd. (c) to "either" subdivision (a) "or (f)"; and added subd. (f).

§ 1203.1. Probation; suspension of sentence; conditions which may or must be imposed; forwarding restitution to victims; time; supervisors authorized to provide public work; work to support dependents or pay fine; service of sentence at intermittent periods; objectives; violations; authority of probation officer; termination of probation; fingerprints; disposition of fines; duration of section

Text of section operative until Jan. 1, 1989.

The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; provided, however, that where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years; may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; shall provide for restitution in proper cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department. In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 90 days from the date the payment is received by the probation department. In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

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In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods such sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

This section shall remain in effect only until January 1, 1989, and as of that date is repealed, unless a later enacted statute which is chaptered before January 1, 1989, deletes or extends that date. (Amended by Stats.1982, c. 515, p. —, § 1; Stats.1982, c. 1412, p. —, § 1; Stats.1982, c. 1413, p. —, § 6; Stats.1982, c. 1414, p. —, § 1.5.)

For text of section operative Jan. 1, 1989, see § 1203.1, post.

1982 Amendments. Substituted "shall provide for re- of the first paragraph; inserted the second through the titution" for "may provide for reparation" near the end

§ 1203.1. Probation; suspension of sentence; conditions which may or must be imposed; supervisors authorized to provide public work; work to support dependents or pay fine; service of sentence at intermittent periods; objectives; violations; authority of probation officer; termination of probation; fingerprints; disposition of fines; operative date of section

Text of section operative Jan. 1, 1989.

The court or judge thereof, in the order granting probation, may suspend the imposing, or the execution of the sentence and may direct that such suspension may continue for such period of time not exceeding the maximum possible term of such sentence, except as hereinafter set forth, and upon such terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof may imprison the defendant in the county jail for a period not exceeding the maximum time fixed by law in the instant case; however, where the maximum possible term of such sentence is five years or less, then such period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years; may fine the defendant in such sum not to exceed the maximum fine provided by law in such case; or may in connection with granting probation, impose either imprisonment in county jail, or fine, or both, or neither; shall provide for restitution in proper cases; and may require bonds for the faithful observance and performance of any or all of the conditions of probation.

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The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 18959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code. In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in such camp, farms, or other public work instead of in jail, and Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work as therein provided; and supervisors of the several counties are hereby authorized to provide public work and to fix the scale of compensation of such adult probationers in their respective counties. In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report the same to the probation officer and apply such earnings as directed by the court.

In all such cases if as a condition of probation a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation; provided, however, that upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, such marks of identification of each probationer must be taken and a record thereof kept and preserved.

Any other provision of law to the contrary notwithstanding, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation, or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund, for the use and benefit of the county.

If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 2 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

This section shall become operative on January 1, 1989.
(Added by Stats.1982, c. 1414, p. —, § 2.5.)

§ 1203.1d. Payment of reparation and other costs; priority

In determining the amount of an order made pursuant to this code requiring a defendant to make reparation or restitution to a victim of a crime, to pay any money as reimbursement for legal assistance provided by the court, to pay any cost of probation or probation investigation, or to pay any cost of jail or other confinement, the court, after determining the amount of any fine and penalty assessments, shall first determine the amount of restitution to any victim to be ordered and shall then determine the amount of any reimbursement for legal costs and, then, of any reimbursement for probation or incarceration costs.

(Added by Stats.1982, c. 1131, p. —, § 2.)

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§ 1203.2. Rearrest of probationer; revocation of probation; tolling of probationary period; judgment; notice; commitment to youth authority; revocation of suspended sentence; setting aside revocation of probation.

(a) At any time during the probationary period of a person released on probation under the care of a probation officer pursuant to this chapter, any probation or peace officer may, without warrant or other process and at any time until the final disposition of the case rearrest the person and bring him before the court or the court may, in its discretion, issue a warrant for his rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his probation, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he has been prosecuted for such offenses. However, probation shall not be revoked for failure of a person to make restitution pursuant to Section 1203.04 as a condition of probation unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person's ability to pay. Such revocation, summary or otherwise, shall serve to toll the running of the probationary period.

California Civil Code

FELONS—STORIES OF FELONIES— INVOLUNTARY TRUSTS

Assembly Bill No. 2102

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) Victims of felonies have a special relationship to proceeds from the sale of stories about those felonies which are written by persons convicted of committing them.

(b) It is not the intent of the Legislature in enacting this act to criminalize the selling of stories about felonies by convicted felons, or to discourage, inhibit, or prevent anyone from exercising the fundamental right of freedom of expression.

SEC. 2. Section 2224.1 is added to the Civil Code, to read:

2224.1. (a) As used in this section:

(1) "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) "Felony" means a felony defined by any California or United States statute.

(3) "Representative of the felon" means any person or entity receiving proceeds by designation of that felon, or on behalf of that felon or in the stead of that felon, whether by the felon's designation or by operation of law.

(4) (A) "Beneficiary" means a person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

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(B) If a beneficiary described in subparagraph (A) has died, "beneficiary" also includes a person or estate entitled to recover damages pursuant to Section 573 of the Probate Code.

(C) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, "beneficiary" also includes a person described in Section 377 of the Code of Civil Procedure and any beneficiary of a will of the decedent who had a right under that will to receive more than 25 percent of the value of the estate of the decedent.

(5) "Beneficiary's interest in the proceeds" means that portion of the proceeds necessary to pay the following:

(A) In the case of a beneficiary described in subparagraph (A) or (B) of paragraph (4), those damages which, under applicable law other than the provisions of this section, the beneficiary has or had a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages which under all the circumstances of the case may be just.

(C) A beneficiary's interest in the proceeds shall be reduced by the following amount:

(i) Money paid to the beneficiary from the restitution fund because of the crime for which the felon was convicted.

(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(iii) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

(D) In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgment or order.

(6) "Materials" means books, magazine or newspaper articles, movies, films, video tapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.

(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.

(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.

(9) "Proceeds" means all fees, royalties, real property, or other consideration of any and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

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(b) All proceeds from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials that include or are based on the story of a felony for which a convicted felon was convicted, shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the proceeds to the felon or five years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action.

(c) (1) Any beneficiary may bring an action against a convicted felon or representative of the felon to recover his or her interest in the trust established by this section.

(2) That action may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which proceeds are located.

(3) If the court determines that a beneficiary is entitled to proceeds pursuant to this section, the court shall order the payment from proceeds which have been received, and, if that is insufficient, from proceeds which may be received in the future.

(d) If there are two or more beneficiaries and if the available proceeds are insufficient to pay all beneficiaries, the proceeds shall be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them.

Prior to any distribution of any proceeds to a beneficiary, the court shall determine whether the convicted felon has failed to pay any portion of a restitution fine or penalty fine imposed by a court, or any restitution imposed as a condition of probation. The court shall also determine whether the felon is obligated to reimburse a governmental entity for the costs of his or her defense and whether a portion of the proceeds is needed to cover his or her reasonable attorney's fees incurred in the criminal proceeding related to the felony, or any appeal or other related proceeding, or in the defense of the action brought under this section. The court shall order payment of these obligations prior to any payment to a beneficiary, except that 10 percent of the proceeds shall be reserved for payment to the beneficiaries.

(e) (1) The Attorney General may bring an action to require proceeds received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

(2) An action may be brought under this subdivision within six months after the receipt of proceeds by a convicted felon or six months after the date of conviction, whichever is later.

That action may be brought in the superior court of any county in which the Attorney General has an office.

(3) If the Attorney General proves that the proceeds are proceeds from the sale of a story which are subject to an involuntary trust pursuant to this section, and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order that all proceeds be deposited in a bank and held by the

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bank as trustee of the trust until an order of disposition is made by a court pursuant to subdivision (d), or until the expiration of the period specified in subdivision (b).

(4) If the Attorney General prevails in an action under this subdivision, the court shall order the payment from the proceeds to the Attorney General of reasonable costs and attorney's fees.

(f) In any action brought pursuant to subdivision (d) or (e), upon motion of a party the court shall grant a preliminary injunction to prevent any waste of proceeds if it appears that the proceeds are subject to the provisions of this section, and that they may be subject to waste.

(g) Any violation of an order of a court made pursuant to this section shall be punishable as contempt.

(h) The remedies provided by this section are in addition to other remedies provided by law.

No period of limitations, except those provided by this section, shall limit the right of recovery under this section.

SEC. 3. This act amplifies, supplements, and, except for subdivision (e) of Section 2224.1 of the Civil Code, is declaratory of existing law, as contained in Sections 2224 and 3517 of the Civil Code. Therefore, this act shall apply in the case of felonies committed and rights and materials sold before, as well as after, the effective date of this act.

SEC. 4. If any word, phrase, clause, or sentence in any section amended or added by this act, or any section or provision of this act, or application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other word, phrase, clause, or sentence in any section amended or added by this act, or any other section, provisions or application of this act which can be given effect without the invalid word, phrase, clause, sentence, section, provision or application and to this end the provisions of this act are declared to be severable.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The public safety requires that persons who have committed heinous crimes not be allowed to profit from that wrongdoing, and that there is a need to clarify rights under existing law in view of controversy over presently contested rights.

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California Penal Code

§ 1329. Witnesses; fees and expenses; procedure for payment; rate

(a) When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, whether upon a subpoena or in pursuance of an undertaking, or voluntarily, the court, at its discretion, if the attendance of the witness be upon a trial may by an order upon its minutes, or in any criminal proceeding, by a written order, direct the county auditor to draw his warrant upon the county treasurer in favor of such witness for witness' fees at the rate of twelve dollars (\$12) for each day's actual attendance and for a reasonable sum to be specified in the order for the necessary expenses of such witness. The court, in its discretion, may make an allowance under this section, or under any appropriate section in Chapter 1 (commencing with Section 68070), Title 8, of the Government Code, other than Section 68093. The allowances are county charges.

(b) The court, in its discretion, may authorize payment to such a witness, if he is employed and if his salary is not paid by his employer during the time he is absent from his employment because of being such a witness, of a sum equal to his gross salary for such time, but such sum shall not exceed eighteen dollars (\$18) per day. The sum is a county charge.

A person compensated under the provisions of this subdivision may not receive the payment of witness' fees as provided for in subdivision (a).

California Const. Art. 1 §28

§ 28. Legislative findings and declaration; rights of victims; restitution; safe schools; truth-in-evidence; bail; prior convictions

Sec. 28. (a) **Legislative findings and declaration; rights of victims.** The People of the State of California find and declare that the enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system to fully protect those rights, is a matter of grave statewide concern.

The rights of victims pervade the criminal justice system, encompassing not only the right to restitution from the wrongdoers for financial losses suffered as a result of criminal acts, but also the more basic expectation that persons who commit felonious acts causing injury to innocent victims will be appropriately detained in custody, tried by the courts, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance.

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Such public safety extends to public primary, elementary, junior high, and senior high school campuses, where students and staff have the right to be safe and secure in their persons.

To accomplish these goals, broad reforms in the procedural treatment of accused persons and the disposition and sentencing of convicted persons are necessary and proper as deterrents to criminal behavior and to serious disruption of people's lives.

(b) **Restitution.** It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.

Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary. The Legislature shall adopt provisions to implement this section during the calendar year following adoption of this section.

(c) **Right to Safe Schools.** All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.

(d) **Right to Truth-in-Evidence.** Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

(e) **Public Safety Bail.** A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety shall be the primary consideration.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail. However, no person charged with the commission of any serious felony shall be released on his or her own recognizance.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

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(f) **Use of Prior Convictions.** Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding. When a prior felony conviction is an element of any felony offense, it shall be proven to the trier of fact in open court.

(g) **Serious felony.** As used in this article, the term "serious felony" is any crime defined in Penal Code, Section 1192.7(c).

(Added by Initiative Measure, approved by the people, June 8, 1982.)

Amendment of Const. Art. 1, § 12 by Assembly Const. Amend. No. 14 (1982) was approved by a higher affirmative vote at the primary election held June 8, 1982 than Initiative Measure which repealed Const. Art. 1 § 12, and added this section which included a new provision on "Public Safety Bail". If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail, see Const. Art. 2, § 10; Art. 18, § 4.

California Penal Code

§ 136. Definitions.

As used in this chapter:

(1) "Malice" means an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

(2) "Witness" means any natural person, (i) having knowledge of the existence or nonexistence of facts relating to any crime, or (ii) whose declaration under oath is received or has been received as evidence for any purpose, or (iii) who has reported any crime to any peace officer, prosecutor, probation or parole officer, correctional officer or judicial officer, or (iv) who has been served with a subpoena issued under the authority of any court in the state, or of any other state or of the United States, or (v) who would be believed by any reasonable person to be an individual described in subparagraphs (i) to (iv), inclusive.

(3) "Victim" means any natural person with respect to whom there is reason to believe that any crime as defined under the laws of this state or any other state or of the United States is being or has been perpetrated or attempted to be perpetrated.

(Added by Stats.1980, c. 686, p. 2076, § 2.)

1980 Legislation.

Former § 136 was amended by Stats.1976, c. 1125, p. 5035, § 13.7; Stats.1976, c. 1139, p. 5092, § 119; Stats.

1979, c. 944, p. 3252, § 1, and was repealed by Stats.1980, c. 686, p. 2076, § 1. See, now, this section and §§ 136.1.

Derivation: Former § 136, enacted 1872, amended by Stats.1967, c. 1094, p. 2735, § 1; Stats.1976, c. 1125, p. 5035, § 13.7; Stats.1976, c. 1139, p. 5092, § 119; Stats. 1979, c. 944, p. 3252, § 1.

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§ 136.1. Intimidation of witnesses and victims; offenses; penalties; enhancement; aggravation

(a) Except as provided in subdivision (c), every person who knowingly and maliciously prevents or dissuades or attempts to so prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law is guilty of a misdemeanor.

(b) Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a misdemeanor:

(1) Making any report of such victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

(2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with such victimization.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:

(1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person.

(2) Where the act is in furtherance of a conspiracy.

(3) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section.

(4) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony.

(d) Every person attempting the commission of any act described in subdivisions (a), (b), and (c) is guilty of the offense attempted without regard to success or failure of such attempt. The fact that no person was injured physically, or in fact intimidated, shall be no defense against any prosecution under this section.

(e) Nothing in this section precludes the imposition of an enhancement for great bodily injury where the injury inflicted is significant or substantial.

(f) The use of force during the commission of any offense described in subdivision (c) shall be considered a circumstance in aggravation of the crime in imposing a term of imprisonment under subdivision (b) of Section 1170.

(Added by Stats.1980, c. 686, p. 2076, § 2.1. Amended by Stats.1982, c. 1098, p. —, § 1.)

1982 Amendment. Added subds. (e) and (f).

Derivation: Former § 136, enacted 1872, amended by Stats.1967, c. 1094, p. 2735, § 1; Stats.1976, c. 1125, p. 5035, § 13.7; Stats.1976, c. 1139, p. 5092, § 119; Stats. 1979, c. 944, p. 3252, § 1.

Library References

Obstructing Justice § 4.

C.J.S. Obstructing Justice or Governmental Administration §§ 9, 16, 17.

Index to Notes

In general 1

Evidence 2

Search and seizure 3

1. In general

Trial court's finding that petitioner, when she drove out of her driveway and her husband ran through backyard, jumped a fence and hurried through some bushes to reach her vehicle, was flagrantly assisting an attempt to avoid service of a subpoena was entirely merited by facts included in the record; further inference that reason petitioner and her husband were attempting to avoid service of subpoena on husband was so that husband

would not have to testify at a trial was rational, logical and supported by substantial evidence. Matter of Holmes (1982) 185 Cal.Rptr. 795, 115 C.A.3d 1024.

There is no requirement that defendant must say "Don't testify" or words tantamount thereto in order to commit offense of threatening witness, as long as his words or actions support the inference that he sought to prevent or dissuade potential witness from attending upon trial or attempting by threat or force to induce a person to withhold testimony. People v. Thomas (1978) 148 Cal.Rptr. 52, 83 C.A.3d 511.

2. Evidence

Testimony concerning threats made to witness in criminal prosecution was nonhearsay as to witness where offered on credibility issue raised by witness' retraction of identification of defendant as perpetrator of crime. People v. Brooks (1978) 151 Cal.Rptr. 606, 88 C.A.3d 180.

Though, at trial of juvenile, witness recanted to a degree, his testimony that juvenile had said to him "Don't tell no lie on him" or "Don't tell no law on him" or "Stay out of his way," together with witness' previous statement to police officer concerning threats of juvenile to kill witness if he testified, provided substantial evidence to support finding that juvenile did in fact attempt to improperly dissuade witness from testifying. Michael T. v. People (1978) 149 Cal.Rptr. 87, 84 C.A.3d 907.

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3. Search and seizure

Lawful arrest on charge of threatening witness did not justify seizure of sun roof, rearview mirrors and luggage

rack which defendant sought to suppress in prosecution for receiving stolen property. *Wilder v. Superior Court of Tulare County* (1979) 154 Cal.Rptr. 494, 92 C.A.3d 90.

§ 136.2. Good cause belief of intimidation or dissuasion of victim or witness to occur; order of court; violations; punishment

Upon a good cause belief that intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(a) An order that a defendant shall not violate any provision of Section 136.1.

(b) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(c) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under such reasonable restrictions as the court may impose.

(d) An order calling for a hearing to determine if an order as described in subdivisions (a) to (c), inclusive, should be issued.

(e) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness or both. Such an order shall not be made without the consent of such agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness.

Any person violating any order made pursuant to subdivisions (a) to (e), inclusive, may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(Added by Stats.1980, c. 686, p. 2077, § 2.2.)

Derivation: Former § 136, enacted 1872, amended by Stats.1967, c. 1094, p. 2735, § 1; Stats.1976, c. 1125, p. 5035, § 13.7; Stats.1976, c. 1139, p. 5092, § 119; Stats. 1979, c. 944, p. 3252, § 1.

Library References

Injunction — 102.
C.J.S. Injunctions §§ 153, 159, 161.

§ 136½. Dissuading witness from attending; bribe-

Supplementary Index to Notes

Understanding on agreement 6

1. Construction and application

Conviction on charges of bribing witness not to testify merits disbarment. *In re Hanley* (1975) 119 Cal.Rptr. 5, 530 P.2d 1381.

§ 136.5. Deadly weapon; intent to use to intimidate witness; offense; penalty

Any person who has upon his person a deadly weapon with the intent to use such weapon to commit a violation of Section 136.1 is guilty of an offense punishable by imprisonment in the county jail for not more than one year, or in the state prison.

(Added by Stats.1982, c. 1101, p. —, § 1.)

6. Understanding or agreement

Grand jury had probable cause to believe that defendant, who prepared nonprosecution agreement and presented it to crime victim, did so with the intent of preventing the crime victim's testimony at trial, although the agreement did not expressly so provide, and, therefore, trial court erred in setting aside count of indictment charging defendant with bribing a witness not to attend trial. *People v. Pic'l* (1982) 183 Cal.Rptr. 685, 646 P.2d 847, 31 C.3d 731.

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§ 137. Influencing testimony or information given to a law enforcement official

(a) Every person who gives or offers, or promises to give, to any witness, * * * person about to be called as a witness, or person about to give material information pertaining to a crime to a law enforcement official, any bribe, upon any understanding or agreement that the testimony of such witness or information given by such person shall be thereby influenced is guilty of a felony.

(b) Every person who attempts by force or threat of force or by the use of fraud to induce any person to give false testimony or withhold true testimony or to give false material information pertaining to a crime to, or withhold true material information pertaining to a crime from, a law enforcement official is guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years.

As used in this subdivision, "threat of force" means a credible threat of unlawful injury to any person or damage to the property of another which is communicated to a person for the purpose of inducing him to give false testimony or withhold true testimony or to give false material information pertaining to a crime to, or to withhold true material information pertaining to a crime from, a law enforcement official.

(c) Every person who knowingly induces another person to give false testimony or withhold true testimony not privileged by law or to give false material information pertaining to a crime to, or to withhold true material information pertaining to a crime from, a law enforcement official is guilty of a misdemeanor.

(d) At the arraignment, on a showing of cause to believe this section may be violated, the court, on motion of a party, shall admonish the person who there is cause to believe may violate this section and shall announce the penalties and other provisions of this section.

(e) As used in this section "law enforcement official" includes any district attorney, deputy district attorney, city attorney, deputy city attorney, the Attorney General or any deputy attorney general, or any peace officer included in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(f) The provisions of subdivision (c) shall not apply to an attorney advising a client or to a person advising a member of his or her family.

(Amended by Stats.1970, c. 353, p. 766, § 1; Stats.1977, c. 67, p. 471, § 1; Stats.1979, c. 944, p. 3252, § 2; Stats.1980, c. 1120, p. 3617, § 1.)

1970 Amendment. Inserted, following "attempts by", the words "force or threat of force or by" and added the second paragraph.

1977 Amendment. Substantially rewrote the section, which previously read:

"Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by force or threat of force or by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony."

"As used in this section, threat of force means a credible threat of unlawful injury to any person or property which is communicated to a person for the purpose of inducing him to give false or withhold true testimony."

1979 Amendment. Added in subd. (b), in the first paragraph, the language following "felony"; in the second paragraph, substituted "or damage to the property of another" for "or property"; in subd. (c) before "is guilty" inserted "not privileged by law"; and added subd. (d).

1980 Amendment. Inserted in subd. (a) "or person about to give material information pertaining to a crime to a law enforcement official" and "or information given

by such person"; inserted in subds. (b) and (c) the giving of false material information pertaining to a crime to, or the withholding of true material information pertaining to a crime from, a law enforcement official; and added subds. (e) and (f).

Notes of Decisions

1. Construction and application

Conviction on charges of bribing witness not to testify merits disbarment. *In re Hanley* (1975) 119 Cal.Rptr. 5, 530 P.2d 1381.

5. Understanding or agreement

Grand jury had probable cause to believe that defendant, who prepared nonprosecution agreement and presented it to crime victim, did so with intent to influence the crime victim's testimony by way of persuading him to withhold it altogether, and, therefore, trial court erred in setting aside count of indictment charging defendant with bribing a witness to influence testimony. *People v. Pic'l* (1982) 183 Cal.Rptr. 685, 646 P.2d 847, 31 C.3d 731.

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§ 1387. Dismissal as bar if felony previously dismissed or if misdemeanor; exceptions for new evidence or intimidation of witness; subsequent prosecution

An order terminating an action pursuant to this chapter, or Section 859b, 861, 871, or 995, is a bar to any other prosecution for the same offense if it is a felony or it is a misdemeanor charged together with a felony and the action has been previously terminated pursuant to this chapter, or Section 859b, 861, 871, or 995, or if it is a misdemeanor not charged together with a felony, except in those felony cases, or those cases where a misdemeanor is charged with a felony, where subsequent to the dismissal of the felony or misdemeanor the judge or magistrate finds that substantial new evidence has been discovered by the prosecution which would not have been known through the exercise of due diligence at or prior to the time of termination of the action or that the termination of the action was the result of the direct intimidation of a material witness, as shown by a preponderance of the evidence.

However, if the previous termination was pursuant to Section 859b, 861, 871, or 995, the subsequent order terminating an action is not a bar to prosecution if either:

(a) Good cause is shown why the preliminary examination was not held within 60 days from the date of arraignment or plea.

(b) The motion pursuant to Section 995 was granted because of (1) present insanity of the defendant or (2) a lack of counsel after the defendant elected to represent himself or herself rather than being represented by appointed counsel.

(Amended by Stats.1982, c. 637, p. —, § 1.)

§ 1191.2. Notice to victim; right to civil recovery against defendant; compensation from restitution fund

In providing notice to the victim pursuant to Section 1191.1, the probation officer shall also provide the victim with information concerning the victim's right to civil recovery against the defendant and the victim's opportunity to be compensated from the Restitution Fund. This information shall be in the form of written material prepared by the Judicial Council and shall be provided to each victim for whom the probation officer has a current mailing address.

(Added by Stats.1983, c. 932, p. —, § 1.)

§ 11116.10. Notice of disposition to victim of crime upon request

(a) Upon the request of a victim of a crime, the prosecuting attorney shall, within 60 days of the final disposition of the case, inform the victim by letter of such final disposition. Such notice shall state the information described in Section 13151.1.

(b) As used in this section, "victim" means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged.

(c) As used in this section, "final disposition," means an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, not to file the case.

(d) This section shall not apply in any case where the offender or alleged offender is a minor unless such minor has been declared not a fit and proper subject to be dealt with under the juvenile court law.

(e) This section shall not apply to any case in which a disposition was made prior to the effective date of this section.

(Added by Stats.1976, c. 1061, p. 4701, § 1. Amended by Stats.1978, c. 152, p. 377, § 8, eff. May 24, 1978, operative July 1, 1978.)

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§ 742. Informing alleged victim of crime of final disposition upon request; restitution

Upon the request of an alleged victim of a crime, the probation officer shall, within 60 days of the final disposition of a case within which a petition has been filed pursuant to Section 602, inform that person by letter of the final disposition of the case. "Final disposition" means dismissal, acquittal, or findings made pursuant to this article. If the court orders that restitution shall be made to the victim of a crime, the amount, terms, and conditions thereof shall be included in the information provided pursuant to this section.

(Added by Stats.1976, c. 1070, p. 4813, § 4. Amended by Stats.1981, c. 447, p. —, § 1.)

California Penal Code

§ 1191.1. Victim or next of kin; appearance and statement at sentencing proceedings; duty of court; amendment of section.

The victim of any crime, or the next of kin of the victim if the victim has died, has the right to attend all sentencing proceedings under this chapter and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the person who committed the crime.

The victim or next of kin has the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his or her views concerning the crime, the person responsible, and the need for restitution. The court in imposing sentence shall consider the statements of victims and next of kin made pursuant to this section and shall state on the record its conclusion concerning whether the person would pose a threat to public safety if granted probation.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

The people of the State of California do enact as follows:

SECTION 1. Section 1191.2 is added to the Penal Code, to read: 1191.2. In providing notice to the victim pursuant to Section 1191.1, the probation officer shall also provide the victim with information concerning the victim's right to civil recovery against the defendant and the victim's opportunity to be compensated from the Restitution Fund. This information shall be in the form of written material prepared by the Judicial Council and shall be provided to each victim for whom the probation officer has a current mailing address.

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§ 3042. Hearings to review parole; prisoners sentenced to life sentences; notice; transcripts; time for release; statement of findings and reasons

(a) At least 30 days before the Board of Prison Terms shall meet to review or consider the parole suitability or the setting of a parole date for any prisoner sentenced to a life sentence, the board shall send written notice thereof to each of the following persons: the judge of the superior court before whom the prisoner was tried and convicted, the attorney * * * who represented the defendant at trial, the district attorney of the county * * * in which the offense was committed, the law enforcement agency that investigated the case, and where the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that peace officer at the time of the murder. In the case of a prisoner sentenced to a life sentence for first-degree murder, the board shall also send written notice to the next of kin of the person murdered where a request for such notice has been filed with the Board of Prison Terms by the next of kin. The burden shall be on the requesting party to keep the board apprised of the party's current mailing address.

(b) The Board of Prison Terms shall record all such hearings and transcribe such recordings within 30 days of any such hearing. All such transcripts, including the transcripts of all such prior hearings, shall be filed and maintained in the office of the Board of Prison Terms and shall be made available to the public no later than 30 days from the date of the hearing. No such prisoner shall actually be released on parole prior to 60 days from the date of the hearing.

(c) At any such hearing the presiding hearing officer must state findings and supporting reasons on the record.

(d) Any statements, recommendations, or other materials considered shall be incorporated into the transcript of any such hearing, unless such material is confidential in order to preserve institutional security and the security of others who might be endangered by disclosure.

(e) This section shall not apply to any hearing held to consider advancing a prisoner's parole date due to his or her conduct since his or her last hearing.

* * *

§ 3043. Parole eligibility or date; notice to victim or next of kin; request; appearance and statement; duty of board; amendment of section

Upon request, notice of any hearing to review or consider the parole eligibility or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms at least 30 days before the hearing to any victim of a crime committed by the prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

The victim or next of kin has the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his or her views concerning the crime and the person responsible. The board, in deciding whether to release the person on parole, shall consider the statements of victims and next of kin made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

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ARTICLE 1.5. REPORTS OF DISPOSITION OF INMATES [NEW]

Sec.

11155. Notice; placement in reentry or work furlough program; escape; address to which sent.

11157. Victims; notification of opportunity to receive notice.

11158. Victim defined.

Article 1.5 was added by Stats.1982, c. 1048, p. —, § 1.

§ 11153. Notice; placement in reentry or work furlough program; escape; address to which sent

(a) At least 30 days prior to the placement of an inmate in any reentry or work furlough program, the Department of Corrections shall send written notice, if such notice has been requested, to all of the following: (1) the chief of police of the city, if any, in which the inmate will reside, if known, or in which placement will be made, (2) the sheriff of the county in which the inmate will reside, if known, or in which placement will be made, and (3) the victim, if any, of the crime for which the inmate was convicted or the next of kin of the victim if the crime was a homicide, if the victim or the next of kin has submitted a request for notice with the department. Information regarding victims or next of kin, requesting the notice, and the notice, shall be confidential and not available to the inmate.

(b) In the event of an escape of an inmate from any facility under the jurisdiction of the Department of Corrections, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city, and the sheriff of the county, in which the inmate resided immediately prior to the inmate's arrest and conviction, and, if previously requested, to the victim, if any, of the crime for which the inmate was convicted, or to the next of kin of the victim if the crime was a homicide. If the inmate is recaptured, the department shall send written notice thereof to the persons designated in this subdivision within 30 days after regaining custody of the inmate.

(c) The Department of Corrections shall send the notices required by this section to the last address provided to the department by the requesting party. It is the responsibility of the requesting party to provide the department with a current address.

(Added by Stats.1982, c. 1048, p. —, § 1.)

Library References

Convicts § 7(2).
C.J.S. Convicts § 13.

§ 11157. Victims; notification of opportunity to receive notice

The victims may be notified of the opportunity to receive the notices provided by this article by means of adding a paragraph to the information contained on subpoena forms which are used in subpoenaing victims as material witnesses to any court proceedings resulting from the perpetration of the crime in which the victim was involved.

(Added by Stats.1982, c. 1048, p. —, § 1.)

§ 11158. Victim defined

As used in this article, "victim" means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged.

(Added by Stats.1982, c. 1048, p. —, § 1.)

* * *

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§ 1407. Property in custody of peace officer; holding subject to provisions of chapter

When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the provisions of this chapter relating to the disposal thereof.

(Enacted 1872. Amended by Stats.1975, c. 774, p. 1794, § 1.)

§ 1408. Property in custody of peace officer; order for delivery to owner; payment of expenses

On the application of the owner and on satisfactory proof of his ownership of the property, after reasonable notice and opportunity to be heard has been given to the person from whom custody of the property was taken and any other person as required by the magistrate, the magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling it, shall order it to be delivered, without prejudice to the state, to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

(Enacted 1872. Amended by Stats.1935, c. 112, p. 462, § 1; Stats.1971, c. 799, p. 1553, § 1.)

§ 1409. Property in custody of magistrate; delivery to owner; proof of title; payment of expenses

If property stolen or embezzled comes into the custody of the magistrate, it shall be delivered, without prejudice to the state, to the owner upon his application to the court and on satisfactory proof of his title, after reasonable notice and opportunity to be heard has been given to the person from whom custody of the property was taken and any other person as required by the magistrate, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

(Enacted 1872. Amended by Stats.1971, c. 799, p. 1553, § 2.)

§ 1410. Property not delivered to owner; proof of title; order for restoration by trial court

If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, upon the application of the owner to the court and on proof of his title, after reasonable notice and opportunity to be heard has been given to the person from whom custody of the property was taken and any other person as required by the court, may order it to be restored to the owner without prejudice to the state.

(Enacted 1872. Amended by Stats.1971, c. 799, p. 1553, § 3.)

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§ 1413. Person in charge of property section; record of property allegedly stolen or embezzled; delivery to owner; review by magistrate; liability

(a) The clerk or person having charge of the property section for any police department in any incorporated city or town, or for any sheriff's department in any county, shall enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and shall attach a number to each article, and make a corresponding entry thereof. He may engrave or imbed an identification number in property described in Section 537e for the purposes thereof.

(b) The clerk or person in charge of the property section may, upon satisfactory proof of the ownership of property held pursuant to Section 1407, and upon presentation of proper personal identification, deliver it to the owner. Such delivery shall be without prejudice to the state or to the person from whom custody of the property was taken or to any other person who may have a claim against the property. Prior to such delivery such clerk or person in charge of the property section shall make and retain a complete photographic record of such property. The person to whom property is delivered shall sign, under penalty of perjury, a declaration of ownership, which shall be retained by the clerk or person in charge of the property section. This subdivision shall not apply to any property subject to forfeiture under any provision of law. This subdivision shall not apply unless the clerk or person in charge of the property section has served upon the person from whom custody of the property was taken a notice of a claim of ownership and a copy of the satisfactory proof of ownership tendered and has allowed such person reasonable opportunity to be heard as to why the property should not be delivered to the person claiming ownership.

If the person upon whom a notice of claim and proof of ownership has been served does not respond asserting a claim to the property within 15 days from the date of receipt of the service, the property may be disposed of in a manner not inconsistent with the provisions of this section.

(c) The magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, or the court before which a trial is had for stealing or embezzling it, shall upon application by the person from whom custody of the property was taken, review the determination of the clerk or person in charge of the property section, and may order the property taken into the custody of the court upon a finding that the person to whom the property was delivered is not entitled thereto.

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Such court shall make its determination in the same manner as a determination is made when the matter is before the court pursuant to Sections 1408 to 1410, inclusive.

(d) The clerk or person in charge of the property section is not liable in damages for any official action performed hereunder in good faith.

(Enacted 1872. Amended by Stats.1975, c. 774, p. 1794, § 2; Stats.1980, c. 312, § 1; Stats.1981, c. 714, § 332.)

* * *

§ 868. Open and public examination; exclusion of public upon request of defendant and finding by magistrate; exceptions; person for moral support of prosecuting witness

The examination shall be open and public. However, upon the request of the defendant and a finding by the magistrate that exclusion of the public is necessary in order to protect the defendant's right to a fair and impartial trial, the magistrate * * * shall exclude from the examination every person except the clerk, court reporter and bailiff, the prosecutor and his or her counsel, the Attorney General, the district attorney of the county, the investigating officer, the officer having custody of a prisoner witness while the prisoner is testifying, the defendant and his or her counsel, * * * the officer having the defendant in custody * * * and a person chosen by the prosecuting witness who is not himself or herself a witness but who is present to provide the prosecuting witness moral support, provided that the person so chosen shall not discuss prior to or during the preliminary examination the testimony of the prosecuting witness with any person, other than the prosecuting witness, who is a witness in the examination. Nothing in this section shall affect the right to exclude witnesses as provided in Section 867 of the Penal Code.

This section shall become operative on March 1, 1982.

(Amended by Stats.1976, c. 1178, p. 5274, § 2; Stats.1982, c. 83, p. —, § 3, urgency, eff. March 1, 1982, operative March 1, 1982.)

§ 868.5. Sex offense cases; attendance of supporting person at testimony of prosecuting witness 16 years of age or under

(a) Notwithstanding any other provision of law, a prosecuting witness 16 years of age or under in a case involving a violation of Section 243.4, 261, 285, 286, 288, 288a, 289 or 647a, or a violation of subdivision (1) of Section 314, shall be entitled for support to the attendance of a parent, guardian or sibling of his or her own choosing, whether or not a witness, at the preliminary hearing and at the trial, during the testimony of the prosecuting witness. The person so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person * * * is related to the prosecuting witness as a parent, guardian or sibling and does not make notes during the hearing. * * *

(b) If the person so chosen is also a prosecuting witness, the prosecution shall present, on noticed motion, evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court must grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony.

(c) The testimony of the person so chosen who is also a prosecuting witness shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during the person's testimony. Whenever the evidence given by the person would be subject to exclusion because given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

(Added by Stats.1978, c. 1310, p. 4298, § 1. Amended by Stats.1983, c. 347, p. —, § 1.)

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§ 868.7. Examination closed to public during testimony of witness; motion by prosecutor; conditions; duration of section

Text of section operative until Jan. 1, 1987.

(a) Notwithstanding any other provision of law, the magistrate may, upon motion of the prosecutor, close the examination in the manner described in Section 868 during the testimony of a witness:

(1) Who is * * * the complaining victim of a sex offense, where testimony before the general public would be likely to cause serious psychological harm to the witness and where no alternative procedures, including, but not limited to, videotaped deposition or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, are available to avoid the perceived harm.

(2) Whose life would be subject to a substantial risk in appearing before the general public, and where no alternative security measures, including, but not limited to, efforts to conceal his or her features or physical description, searches of members of the public attending the examination, or the temporary exclusion of other actual or potential witnesses, would be adequate to minimize the perceived threat.

(b) In any case where public access to the courtroom is restricted during the examination of a witness pursuant to this section, a transcript of the testimony of that witness shall be made available to the public as soon as is practicable.

The provisions of this section shall remain in effect only until January 1, 1987, and as of such date is repealed, unless a later enacted statute, which is chaptered on or before January 1, 1987, deletes or extends such date.

(Added by Stats.1982, c. 83, p. —, § 4, urgency, eff. March 1, 1982. Amended by Stats.1983, c. 284, p. —, § 1.)

§ 868.7. Examination closed to public during testimony of witness; motion by prosecutor; conditions; operative date of section

Text of section operative Jan. 1, 1987.

(a) Notwithstanding any other provision of law, the magistrate may, upon motion of the prosecutor, close the examination in the manner described in Section 868 during the testimony of a witness:

(1) Who is a minor and is the complaining victim of a sex offense, where testimony before the general public would be likely to cause serious psychological harm to the witness and where no alternative procedures, including, but not limited to, video taped deposition or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, are available to avoid the perceived harm.

(2) Whose life would be subject to a substantial risk in appearing before the general public, and where no alternative security measures, including, but not limited to, efforts to conceal his or her features or physical description, searches of members of the public attending the examination, or the temporary exclusion of other actual or potential witnesses, would be adequate to minimize the perceived threat.

(b) In any case where public access to the courtroom is restricted during the examination of a witness pursuant to this section, a transcript of the testimony of such witness shall be made available to the public as soon as is practicable.

This section shall become operative on January 1, 1987.

(Added by Stats.1983, c. 284, p. —, § 2, operative Jan. 1, 1987.)

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CHAPTER 4. CRIMINAL JUSTICE PLANNING COMMITTEE FOR STATE JUDICIAL SYSTEM -

Article	Section
2. Local Assistance Centers for Victims and Witnesses [New]	13835

ARTICLE 2. LOCAL ASSISTANCE CENTERS FOR VICTIMS AND WITNESSES [NEW]

Sec.	
13835.	Legislative findings; declaration and intent.
13835.2.	Funds available and awarded to public and private nonprofit agencies; report to legislature.
13835.4.	Activities in connection with primary and optional services.
13835.5.	Primary and optional services.
13835.6.	Standards for activities and services; effectiveness of centers; report to legislature.
13835.7.	Victim-witness assistance fund; legislative intent; transfer of funds.

Article 2 was added by Stats.1983, c. 1312, p. —, § 2.

Former Article 2 was repealed by Stats.1983, c. 1312, p. —, § 1.

§ 13835. Legislative findings, declaration and intent

The Legislature finds and declares as follows:

(a) That there is a need to develop methods to reduce the trauma and insensitive treatment that victims and witnesses may experience in the wake of a crime, since all too often citizens who become involved with the criminal justice system, either as victims or witnesses to crime, are further victimized by that system.

(b) That when a crime is committed, the chief concern of criminal justice agencies has been apprehending and dealing with the criminal, and that after police leave the scene of the crime, the victim is frequently forgotten.

(c) That victims often become isolated and receive little practical advice or necessary care.

(d) That witnesses must make arrangements to appear in court regardless of their own schedules, child care responsibilities, or transportation problems, and that they often find long waits, crowded courthouse hallways, confusing circumstances and, after testifying, receive no information as to the disposition of the case.

(e) That a large number of victims and witnesses are unaware of both their rights and obligations.

(f) That although the State of California has a fund for needy victims of violent crimes, and compensation is available for medical expenses, lost income or wages, and rehabilitation costs, the application process may be difficult, complex, and time-consuming, and victims may not be aware that the compensation provisions exist.

It is, therefore, the intent of the Legislature to provide services to meet the needs of both victims and witnesses of crime through the funding of local comprehensive centers for victim and witness assistance.

§ 13835.2. Funds available and awarded to public and private nonprofit agencies; report to legislature

(a) Funds appropriated from the Victim-Witness Assistance Fund shall be made available through the Office of Criminal Justice Planning to any public or private nonprofit agency for the assistance of victims and witnesses which meets all of the following requirements:

(1) It provides comprehensive services to victims and witnesses of all types of crime. It is the intent of the Legislature to make funds available only to programs which do not restrict services to victims and witnesses of a particular type of crime, and which do not restrict services to victims of crime where there is a suspect in the case.

(2) It is recognized by the board of supervisors as the major provider of comprehensive services to victims and witnesses in the county.

(3) It is selected by the board of supervisors as the agency to receive funds pursuant to this article.

(4) It assists victims of crime in the preparation, verification, and presentation of their claims to the State Board of Control for indemnification pursuant to Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

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(5) It cooperates with the State Board of Control in verifying the data required by the provisions of Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(b) The Office of Criminal Justice Planning shall consider the following factors together with any other circumstances it deems appropriate in awarding funds to public or private nonprofit agencies designated as victim and witness assistance centers:

(1) The capability of the agency to provide comprehensive services as defined in this article.

(2) The stated goals and objectives of the center.

(3) The number of people to be served and the needs of the community.

(4) Evidence of community support.

(5) The organizational structure of the agency which will operate the center.

(c) The Office of Criminal Justice Planning shall conduct an evaluation of the activities and performance of the centers established pursuant to Chapter 1256 of the Statutes of 1977 to determine their ability to comply with the intent of this article, and shall report the findings thereon to the Legislature by January 1, 1985.

(Added by Stats.1983, c. 1312, p. —, § 3.)

1983 Legislation.
Addition of this section by § 2 of Stats.1983, c. 1312, p. —, § 1.
Former § 13835.2 was repealed by Stats.1983, c. 1312, p. —, § 1.
—, failed to become operative under the provisions of § 5 of that Act.

§ 13835.4. Activities in connection with primary and optional services.

In order to insure the effective delivery of comprehensive services to victims and witnesses, a center established by an agency receiving funds pursuant to this article shall carry out all of the following activities in connection with both primary and optional services:

(a) Translation services for non-English speaking victims and witnesses or the hearing-impaired.

(b) Follow-up contact to determine whether the client received the necessary assistance.

(c) Field visits to a client's home, place of business, or other location, whenever necessary to provide services.

(d) Service to victims and witnesses of all types of crime.

(e) Volunteer participation to encourage community involvement.

(f) Services for elderly victims of crime, appropriate to their special needs.

(Added by Stats.1983, c. 1312, p. —, § 2.)

1983 Legislation.
Former § 13835.4 was repealed by Stats.1983, c. 1312, p. —, § 1.

§ 13835.5. Primary and optional services

(a) Comprehensive services shall include all of the following primary services:

(1) Crisis intervention, providing timely and comprehensive responses to the individual needs of victims.

(2) Emergency assistance, directly or indirectly providing food, housing, clothing, and, when necessary, cash.

(3) Resource and referral counseling to agencies within the community which are appropriate to meet the victim's needs.

(4) Direct counseling of the victim on problems resulting from the crime.

(5) Assistance in the processing, filing, and verifying of claims filed by victims of crime pursuant to Article 1 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code.

(6) Orientation to the criminal justice system.

(7) Court escort.

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- (8) Presentations to and training of criminal justice system agencies.
 - (9) Public presentations and publicity.
 - (10) Monitoring appropriate court cases to keep victims and witnesses apprised of the progress and outcome of their case.
 - (11) Notification to friends, relatives, and employers of the occurrence of the crime and the victim's condition, upon request of the victim.
 - (b) Comprehensive services may include the following optional services, if their provision does not preclude the efficient provision of primary services:
 - (1) Employer intervention.
 - (2) Creditor intervention.
 - (3) Child care.
 - (4) Assistance in obtaining restitution for the victim.
 - (5) Assistance in obtaining return of a victim's property held as evidence by law enforcement agencies.
 - (6) Notification to witnesses of any change in the court calendar.
 - (7) Funeral arrangements.
 - (8) Crime prevention information.
 - (9) Witness protection, including arranging for law enforcement protection or relocating witnesses in new residences.
 - (10) Assistance in obtaining temporary restraining orders.
 - (11) Transportation.
- (Added by Stats.1983, c. 1312, p. —, § 2.)

§ 13835.6. Standards for activities and services; effectiveness of centers; report to legislature

(a) The Office of Criminal Justice Planning, in cooperation with representatives from local victim and witness assistance centers, shall develop standards defining the activities and services enumerated in this article.

(b) The Office of Criminal Justice Planning in cooperation with representatives from local victim and witness assistance centers, shall develop a method of evaluating the activities and performance of centers established pursuant to this article.

By January 1, 1985, the Office of Criminal Justice Planning shall prepare and submit to the Legislature a report summarizing the effectiveness of victim and witness assistance centers established pursuant to this article. That report shall include, but not be limited to, the effectiveness in achieving the functions and the services enumerated in the article.

(Added by Stats.1983, c. 1312, p. —, § 2.)

1983 Legislation.

Former § 13835.6 was repealed by Stats.1983, c. 1312, p. —, § 1.

Derivation: Former § 13835.9, added by Stats.1977, c. 1256, p. 4750, § 2.

§ 13835.7. Victim-witness assistance fund; legislative intent; transfer of funds

There is in the State Treasury the Victim-Witness Assistance Fund. Funds appropriated thereto shall be dispensed to the "Office of Criminal Justice Planning" exclusively for the purposes specified in this article and for the support of the centers specified in Section 13837.

It is the intent of the Legislature that funding from the Indemnity Fund for the operation and administration of programs pursuant to this article and Section 13837, as specified in the Budget Act of 1983, shall cover only costs for operation and administration through December 31, 1983, and that as of January 1, 1984, such costs shall be payable from the Victim-Witness Assistance Fund. To the extent it is necessary to effectuate this intent, on March 1, 1984, there shall be a one-time transfer between the Restitution Fund and the Victim-Witness Assistance Fund. The amount of the transfer shall be determined by the Department of Finance after consultation with the Office of Criminal Justice Planning, the Board of Control, and the Assembly Select Committee on Victim Restitution.

(Added by Stats.1983, c. 1312, p. —, § 4.)

§§ 13835.8, 13835.9. Repealed by Stats.1983, c. 1312, p. —, § 1

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California Welfare and Institutions Code

CHAPTER 4.5. ELDER ABUSE REPORTING [NEW].

Sec.

9380. Definitions.

9381. Reporting of suspected abuse.

9382. Telephone reports, included information; agency investigators, reception of information; identity of reporting persons; written reports, forms; physician-patient and psychotherapist-patient privileges and oath and duties of attorney.

9383. Telephone reports, relay of information to law enforcement agency; consent of victim, withdrawal; temporary conservatorship or guardianship.

9384. County reports on number of abuse reports.

9385. Civil or criminal liability for reporting.

9386. Failure to report; misdemeanor, penalty; final criminal judgment, admissibility in civil action.

Chapter 4.5 was added by Stats.1983, c. 1273, p. —, § 2.

Cross References

Designation of agency to receive reports, see § 15631.

§ 9380. Definitions

As used in this chapter:

(a) "Elder" means a person 65 years of age or older.

(b) "Elder abuse" means any one or more of the following acts which are inflicted by other than accidental means on an elder by another person: physical abuse, fiduciary abuse, neglect, or abandonment.

(c) "Physical abuse" means a situation where any person who has the care or custody of, or who stands in a position of trust with, an elder, willfully inflicts upon that elder any cruel or inhuman corporal punishment or injury. Physical abuse includes, but is not limited to, direct beatings, sexual assault, unreasonable physical constraint, or prolonged deprivation of food or water.

(d) "Fiduciary abuse" means a situation where any person who stands in a position of trust with respect to an elder, willfully steals the money or property of that elder, or secretes or appropriates the money or property of that elder, to any use or purpose not in the due and lawful execution of his or her trust.

(e) "Neglect" means the negligent failure of any person having the care or custody of an elder to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to:

(1) Failure to assist in personal hygiene, or in the provision of food, and clothing for an elder.

(2) Failure to provide the medical care for the physical and mental health needs of an elder. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect an elder from health and safety hazards.

(4) Failure to prevent an elder from suffering malnutrition.

(f) "Abandonment" means the desertion or willful forsaking of an elder person by any person having the care or custody of that elder under circumstances in which a reasonable person would continue to provide care or custody.

(g) "Elder care custodian" means an administrator of a community care facility licensed to care for the elderly, a public assistance worker, a probation officer, a social worker, a licensed home aide, or an employee of an elder care institution, including personnel of residential care facilities, skilled nursing facilities, and intermediate care facilities.

(h) "Medical practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, osteopath, podiatrist, chiropractor, resident, intern, nurse, pharmacist, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(i) "Nonmedical practitioner" means a state or county public health employee who treats an elder for any condition, a paramedic, a coroner, a geriatric or family counselor, or a lawyer.

(j) "Elder protective agency" means the State Department of Social Services, a county probation department, a county welfare department, a police or sheriff's department, or a nursing home ombudsman.

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§ 9381. Reporting of suspected abuse

(a) Any elder care custodian, medical practitioner, nonmedical practitioner, or employee of an elder protective agency who has actual knowledge that an elder whom he or she observes in his or her professional capacity or within the scope of his or her employment has been the victim of physical abuse shall report the suspected instance of physical abuse to an elder protective agency immediately or as soon as possible by telephone and shall prepare and send a written report thereof within 36 hours.

(b) Any person who has knowledge of or observes an elder whom he or she reasonably suspects has been a victim of elder abuse may report the suspected abuse to an elder protective agency. For the purpose of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect elder abuse.

(c) Any elder care custodian, medical practitioner, nonmedical practitioner, or employee of an elder protective agency who has knowledge of, or who reasonably suspects that mental suffering has been inflicted on an elder, or that his or her emotional well-being is endangered in any other way, may report that suspected instance of elder abuse to an elder protective agency.

(d) When two or more persons who are required to report are present and jointly have knowledge of a suspected instance of elder abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so, shall thereafter make the report.

(e) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this chapter.

(Added by Stats.1983, c. 1273, p. —, § 2.)

§ 9382. Telephone reports; included information; agency investigators, reception of information; identity of reporting persons; written reports, forms; physician-patient and psychotherapist-patient privileges and oath and duties of attorney

(a) Except as provided in subdivision (c), a telephone report of suspected elder abuse shall include the name of the person making the report, the name, address, and age of the elder, the nature and extent of the elderly person's condition, and any other information, including information that led the person to suspect elder abuse, requested by the elder protective agency.

(b) Information relevant to the incident of elder abuse may also be given to an investigator from an elder protective agency who is investigating the suspected case of elder abuse.

(c) The identity of all persons who report under this chapter shall be confidential and disclosed only by court order or between elder protective agencies. Persons who may report pursuant to subdivision (b) of Section 9381 are not required to include their names.

(d) The written reports required for the reporting procedures, as defined in this chapter, shall be submitted not later than April 1, 1984, on forms adopted by the State Department of Social Services after consultation with representatives of the various professional medical associations, hospital associations, and county probation or welfare departments. These forms shall be distributed by the elder protective agencies.

(e) In any court proceeding or administrative hearing, neither the physician-patient privilege nor the psychotherapist-patient privilege applies to the specific information required to be reported pursuant to this chapter. Nothing in this chapter shall be interpreted as requiring an attorney to violate his or her oath and duties pursuant to Section 6067 and subdivision (e) of Section 6068 of the Business and Professions Code, and Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(Added by Stats.1983, c. 1273, p. —, § 2.)

§ 9383. Telephone reports, relay of information to law enforcement agency; consent of victim, withdrawal; temporary conservatorship or guardianship

(a) If a telephone report made pursuant to subdivision (a) of Section 9381 is received by an elder protective agency other than the appropriate law enforcement agency, the receiving agency shall relay the information to the law enforcement agency by telephone as soon as possible.

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(b) An elder abuse victim may refuse or withdraw consent at any time to an investigation or the provision of protective services by an elder abuse agency. The agency shall act only with the consent of the victim unless a violation of the Penal Code has been alleged.

(c) If the elder abuse victim is so incapacitated that he or she cannot legally give or deny consent to protective services, a petition for temporary conservatorship or guardianship may be initiated in accordance with Section 2250 of the Probate Code.

(Added by Stats.1983, c. 1273, p. —, § 2.)

§ 9384. County reports on number of abuse reports

Each county shall report to the State Department of Social Services on the number of reports of abuse received pursuant to this chapter. The department shall determine the frequency of these reports.

(Added by Stats.1983, c. 1273, p. —, § 2.)

§ 9385. Civil or criminal liability for reporting

No person making a report pursuant to subdivision (a) of Section 9381 shall be civilly or criminally liable for that report. Any other person reporting a suspected instance of elder abuse shall not incur civil or criminal liability as a result of any report authorized by this chapter unless it can be proved that the report was falsely made and the person knew or should have known that the report was false.

(Added by Stats.1983, c. 1273, p. —, § 2.)

§ 9386. Failure to report; misdemeanor, penalty; final criminal judgment, admissibility in civil action

Any person who knowingly fails to report as required by subdivision (a) of Section 9381 is guilty of a misdemeanor and is punishable by a fine of not more than one thousand dollars (\$1,000). Evidence of a final judgment adjudging a person guilty of a crime under this section is inadmissible when offered in a civil action to prove any fact essential to the civil action, whether or not the final judgment was based upon a plea of nolo contendere.

(Added by Stats.1983, c. 1273, p. —, § 2.)

* * *

CHAPTER 11. ABUSE OF THE ELDERLY AND OTHER DEPENDENT ADULTS

Chapter 11 was added by Stats.1982, c. 1184, p. —, § 3.

Repeal

Chapter 11 is repealed under the terms of § 15602 on Jan. 1, 1986.

Article	Section
1. Legislative Findings and Intent	15600
2. Definitions	15610
3. Data Base Method of Reporting Requirements	15620
4. Reports of Abuse	15630

ARTICLE 1. LEGISLATIVE FINDINGS AND INTENT

Sec.	
15600.	Dependent adults as subject to abuse, neglect, and abandonment.
15601.	Purposes.
15602.	Duration of chapter.

Article 1 was added by Stats.1982, c. 1184, p. —, § 3.

Repeal

Article 1 is repealed under the terms of § 15602 on Jan. 1, 1986.

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§ 15600. Dependent adults as subject to abuse, neglect, and abandonment

The Legislature recognizes that dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect such persons.

The Legislature further recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of the elderly, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

The Legislature declares that if this state is to foster and promote community services for the economic, social, and personal well-being of its citizens, as desired by the Legislature, it must take steps designed to protect those persons described in this section.

(Added by Stats.1982, c. 1184, p. —, § 3.)

§ 15601. Purposes

The purposes of this act are to:

(a) Encourage health care providers, social service workers, and community members in general to report suspected cases of abuse of dependent adults.

(b) Collect information on the numbers of abuse victims, circumstances surrounding the act of abuse, and other data which will aid the state in establishing adequate services to aid all victims of abuse in a timely, compassionate manner.

(c) Provide for protection under the law for all those persons who report suspected cases of abuse, provided that the report is not made with malicious intent.

(Added by Stats.1982, c. 1184, p. —, § 3.)

§ 15602. Duration of chapter

This chapter shall remain in effect only until January 1, 1986, and on that date is repealed unless a later enacted statute, which is chaptered before that date, deletes or extends the date.

(Added by Stats.1982, c. 1184, p. —, § 3.)

ARTICLE 2. DEFINITIONS

Sec.

15610. Definitions.

Article 2 was added by Stats.1982, c. 1184, p. —, § 3.

Repeal

Article 2 is repealed under the terms of § 15602 on Jan. 1, 1986.

§ 15610. Definitions

As used in this chapter:

(1) The term "abuse" means the infliction of injury, intimidation, cruel punishment, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care-giver of goods or services which are necessary to avoid physical harm or mental suffering.

(2) "Neglect" means the failure of any person having the care or custody of a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise.

Neglect includes, but is not limited to:

(a) Failure to assist in personal hygiene, or in the provision of food and clothing for a dependent adult.

(b) Failure to provide the medical care for the physical and mental health needs of a dependent adult. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(c) Failure to protect a dependent adult from health and safety hazards.

(d) Failure to prevent a dependent adult from suffering malnutrition.

(3) The term "abandonment" refers to the desertion or willful forsaking of a dependent adult by a care-giver.

(4) "Physical abuse" means a situation where any person who has the care or custody of, or who stands in a position of trust with, a dependent adult, willfully inflicts upon that dependent adult any

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cruel or inhuman corporal punishment or injury. Physical abuse includes, but is not limited to, direct beatings, sexual assault, unreasonable physical constraint, or prolonged deprivation of food or water.

(5) The term "mental suffering" means deliberately subjecting a person to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

(6) The term "dependent adult" means any person residing in California who is between the ages of 18 and 64 who has physical, mental, or financial limitations which restrict his or her individual ability to carry out normal activities of daily living, ability to protect his or her own rights, and which threaten the individual's capacity to live an independent life.

(7) The term "goods or services which are necessary to avoid physical harm or mental suffering" includes but is not limited to: (a) the provision of medical care for physical and mental health needs, (b) assistance in personal hygiene, (c) possessing adequate clothing, (d) adequately heated and ventilated shelter, (e) protection from health and safety hazards, (f) protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment, and (g) transportation and assistance necessary to secure any of the needs set forth in paragraphs (a) through (f). No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(8) The term "care-giver" means, any person, health facility, community care facility, clinic, home health agency or legal guardian or conservator who provides goods or services necessary to avoid physical harm, or mental suffering, and who performs duties.

(9) The term "nursing home ombudsman" means the long-term care ombudsman of the Department of Aging, the ombudsman coordinators of that department, and the persons acting in the capacity of regional ombudsman on behalf of approved organizations as described in Chapter 9 (commencing with Section 9700) of Division 8.5.

(Added by Stats.1982, c. 1184, p. —, § 3. Amended by Stats.1983, c. 1273, p. —, § 3.)

ARTICLE 3. DATA BASE METHOD OF REPORTING REQUIREMENTS

Sec.

15620. Report on characteristics; submission; design and use of reporting form.

15620.5. Report to legislature; due date.

15621. Report; areas of inquiry.

Article 3 was added by Stats.1982, c. 1184, p. —, § 3.

Repeal

Article 3 is repealed under the terms of § 15602 on Jan. 1, 1986.

§ 15620. Report on characteristics; submission; design and use of reporting form

The State Department of Social Services shall submit a report to the Legislature and Governor on the characteristics of abuse victims. The State Department of Social Services shall incorporate any and all comments or observations on abuse of the elderly as defined in Section 9380. The State Department of Social Services shall design the report form for dependent adult abuse by April 1, 1983. The counties, or the designated contract agency shall begin using the form by January 1, 1984.

(Added by Stats.1982, c. 1184, p. —, § 3. Amended by Stats.1983, c. 1273, p. —, § 4.)

Library References

Social Security and Public Welfare § 174.
C.J.S. Social Security and Public Welfare § 94.

§ 15620.5. Report to legislature; due date

The State Department of Social Services shall report to the Legislature by July 31, 1985.

(Added by Stats.1982, c. 1184, p. —, § 3.)

§ 15621. Report; areas of inquiry

The evaluation and report shall include, but not be limited to, the following areas of inquiry relating to dependent adult abuse and abuse of the elderly, as defined in Section 9380:

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- (a) An estimation of the extent of the problem.
 - (b) The nature of adult abuse, including data concerning the following:
 - (1) The age of each dependent or elderly person 18 years of age or older reported as having been abused, neglected, or abandoned.
 - (2) The type of incident specified as abuse, either physical or mental, neglect, or abandonment.
 - (3) The frequency of abuse reported in a general time frame such as daily, weekly, monthly, sporadically, or unknown.
 - (4) The location, including demographic information as to urban versus rural incidents of, as well as a differentiation between, institutional and home abuse.
 - (c) The relationship of the suspected abuser to the abused.
 - (d) A standardized reporting mechanism. The form to be utilized shall be developed by the department, which shall be responsible for collecting the data, collating statistical information and delegating a central reporting area for the collection of the data. Full recognition is given that complete data may not be available for each incident reported. The name of the abused and all persons reporting suspected cases shall at all times be confidential.
 - (e) Information discussing the availability of services for those dependent or elderly persons reported as having been abused, neglected, or abandoned.
 - (f) Recommendations by the department, in cooperation with the Department of Aging regarding further study or needed policy changes, including legislation. Specific recommendations for unmet needs shall be identified.
- Information on institutional abuse filed with the State Department of Health Services district licensing and certification offices shall be included in the report. The State Department of Health Services and the State Department of Social Services shall coordinate the confidential exchange of this information.
- (Added by Stats.1982, c. 1184, p. —, § 3. Amended by Stats.1983, c. 1273, p. —, § 5.)

ARTICLE 4. REPORTS OF ABUSE

- Sec.
15630. Any person may report; immunity from civil or criminal liability; exceptions; discharge, suspension, discipline, or harassment of employees prohibited.
15631. Designation of agency to receive reports; adult protective agency or designated contract agency to maintain inventory of available services.

Article 4 was added by Stats.1982, c. 1184, p. —, § 3.

Repeal

Article 4 is repealed under the terms of § 15602 on Jan. 1, 1986.

- § 15630. Any person may report; immunity from civil or criminal liability; exceptions; discharge, suspension, discipline, or harassment of employees prohibited

Any person witnessing or suspecting that a dependent adult is being or has been subject to abuse may report suspected cases to the county adult protective services agency.

Any person reporting under this article is immune from civil or criminal liability due to, or arising out of failure to file a report. Any person who reports under this section is also immune from civil or criminal liability, unless such person acted in bad faith or with a malicious purpose.

No employee shall be discharged, suspended, disciplined, or harassed for making a report pursuant to this article.

(Added by Stats.1982, c. 1184, p. —, § 3.)

- § 15631. Designation of agency to receive reports; adult protective agency or designated contract agency to maintain inventory of available services

The County Board of Supervisors may designate a voluntary or private nonprofit community agency to receive reports filed pursuant to this article and pursuant to Chapter 4.5 (commencing with Section 9380) of Division 8.5.

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Each county adult protective agency or designated contract agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse as defined by Sections 9380 and 15610. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency. Counties are encouraged to establish a formal agreement with the local nursing home ombudsman programs to help resolve suspected cases of abuse occurring in an institutional setting.

(Added by Stats.1982, c. 1184, p. —, § 3. Amended by Stats.1983, c. 1273, p. —, § 6.)

Library References

Social Security and Public Welfare — 174.
C.J.S. Social Security and Public Welfare § 94.

PART 4. SERVICES FOR THE CARE OF CHILDREN

CHAPTER 2. COUNTY ADOPTION AGENCIES

§ 16100. License

Administrative Code References

Adoption of Indian children subject to the Federal Indian Child Welfare Act of 1978, see 22 Cal. Adm. Code 30900 et seq.

Law Review Commentaries

Adoption agencies and their control: Legal problems of administrative practice. (1972) 5 U.C.D. Law Rev. 512.

CHAPTER 2.1. AID FOR ADOPTION OF CHILDREN

Sec.

- 16120. Payment of benefits; conditions.
- 16121. Adoption assistance; amount; time.
- 16121.1. Residence of adoptive parents; effect on eligibility.
- 16122. Private adoption agencies; programs for hard to place children; reimbursement.
- 16123. Adoption assistance; children with mental and physical handicaps; availability of funds.

§ 16115. Designation.

Aid under this chapter shall be known as * * * the Adoption Assistance Program.

(Amended by Stats.1982, c. 977, p. —, § 18, urgency, eff. Sept. 13, 1982, operative Oct. 1, 1982.)

§ 16115.5. Legislative intent

It is the intent of the Legislature in enacting this chapter to benefit hard-to-place children residing in foster homes by providing the stability and security of permanent homes, and in so doing, achieve a reduction in foster home care. It is not the intent of this chapter * * * to increase expenditures but to provide for payments to * * * adoptive parents * * * to enable them to meet the needs of hard-to-place children.

(Amended by Stats.1982, c. 977, p. —, § 19, urgency, eff. Sept. 13, 1982, operative Oct. 1, 1982.)

Derivation: Former § 16121 added by Stats.1968, c. 1322, p. 2498, § 1.

§ 16116. Hard-to-place child

For purposes of this chapter, a "hard-to-place" child * * * means a child * * * whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group which should remain intact, mental, physical, medical or emotional handicaps or age of three years or more. The provisions of this chapter apply only to hard-to-place children.

* * *

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Article 4

VICTIMS OF SEXUAL OFFENSES

Sec.

- 1490. Professional personnel; presence or on call at hospitals for examinations.
- 1491. Examinations without charge; testing for venereal disease and pregnancy.
- 1492. Indemnification of victims; information; claim forms.
- 1493. Recordation of medical data; form; confidentiality; release of records.
- 1494. Protocol for examination; guidelines for treatment; regulations; transmittal to hospitals.

Article 4 was added by Stats.1976, c. 750, p. 1781, § 1.

Cross References

Community crime resistance program, see Penal Code § 13840 et seq.
 Final disposition of case, notice to victim of crime upon request, see Penal Code § 11116.10.
 Minors, see Welfare and Institution Code § 742.
 Local rape victim counseling centers, see § 1598 et seq.
 Standard procedures for response to, and treatment of victims of sexual assaults, see Penal Code § 13516.

Administrative Code References

Victims of sexual assault, see 22 Cal.Adm.Code 40301 et seq.

§ 1490. Professional personnel; presence or on call at hospitals for examinations

Each county with a population of more than 100,000 shall have professional personnel trained in the examination of victims of rape and other sexual assaults present or on call either in county hospitals which provide emergency medical services or in a general acute care hospital which has contracted with a county to provide emergency medical services. Such professional personnel shall be provided at not less than one general acute care hospital per each 1,000,000 of population in the county.

(Added by Stats.1976, c. 750, p. 1781, § 1. Amended by Stats.1977, c. 1219, § 1, eff. Oct. 1, 1977.)

§ 1491. Examinations without charge; testing for venereal disease and pregnancy

In addition to any examination performed without charge to a victim of rape or other sexual assault pursuant to Section 13961.5 of the Government Code, a county hospital shall, without charge, provide the victim of rape or other sexual assault with testing for venereal disease and pregnancy.

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§ 1492. Indemnification of victims; information; claim forms

A county hospital shall provide persons examined or treated in connection with rape or other sexual assaults with information regarding assistance which may be provided pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, together with forms made available by the State Board of Control for filing of claims thereunder.
 (Added by Stats.1976, c. 750, p. 1781, § 1.)

1493. The State Department of Health Services, in cooperation with the Department of Justice, shall adopt a standard and complete form for recordation of medical data disclosed by examination of a victim of rape or other sexual assault.

Each physician and surgeon in a county hospital and in any other general, acute care hospital who conducts an examination for evidence of a rape or other sexual assault shall utilize the standard form adopted pursuant to this section and shall make such observations and perform such tests as may be required for recordation of all the data required by the form. If the examination is for evidence of sexual assault of a child as defined in subdivision (b) of Section 11165 of the Penal Code, completion of the suspected child abuse medical report form adopted pursuant to Section 11168 of the Penal Code shall constitute full compliance with this section. Such forms shall be subject to the same principles of confidentiality applicable to any other medical record.

§ 1494. Protocol for examination; guidelines for treatment; regulations; transmittal to hospitals

The State Department of Health Services shall, by regulation, adopt a standard and complete protocol for the examination of a victim of rape or other sexual assault. The department shall also adopt by reference in such regulations guidelines for treatment of a victim of rape or other sexual assault.

Medical personnel in a county hospital who examine or treat a victim of rape or other sexual assault shall utilize the protocol and guidelines in the examination and treatment.

The department shall transmit a copy of the protocol and guidelines to every county hospital, private general acute care hospital, and public general acute care hospital.

(Added by Stats.1976, c. 750, p. 1781, § 1. Amended by Stats.1977, c. 1252, § 256, operative July 1, 1978; Stats.1977, c. 1219, § 3, eff. Oct. 1, 1977; Stats.1978, c. 429, § 134.5, eff. July 17, 1978, operative July 1, 1978.)

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Chapter 3.7

LOCAL RAPE VICTIM COUNSELING CENTERS

Sec.

1598. Legislative intent.

1598.1. Grants from department of social services; standards or services; utilization for expansion of program; reports.

1598.3. Report to legislature.

1598.5. Grant program; funding; administration.

Chapter 3.7 was added by Stats.1978, c. 1312, § 1.

Cross References

Community crime resistance program, see Penal Code § 13340 et seq.

Confidentiality of records relating to crime of violence, see Government Code § 6254.

Indemnification of private citizens, victims of crime, see Government Code § 13959 et seq.

Counties and cities, see Government Code § 29631 et seq.

Rape prevention program for state employees, see Government Code § 18320 et seq.

Standard procedures for response to, and treatment of victims of sexual assaults, see Penal Code § 13516.

Victims of sexual offenses, examinations and indemnification, see § 1490 et seq.

Library References

Social Security and Public Welfare ☞ 5.

C.J.S. Social Security and Public Welfare §§ 6, 7.

§ 1598. Legislative intent

It is the intent of the Legislature in the enactment of this chapter to establish a grant program administered by the State Department of Social Services to provide support to existing local rape victim counseling centers and to encourage the establishment of such local centers.

(Added by Stats.1978, c. 1312, § 1.)

§ 1598.1. Grants from department of social services; standards or services; utilization for expansion of program; reports

The State Department of Social Services shall provide grants to proposed and existing local rape victim counseling centers. Such centers shall maintain a 24-hour telephone counseling service for rape victims, appropriate in-person counseling and referred service during normal business hours, and maintain other standards or services which shall be determined to be appropriate by the * * * advisory committee established pursuant to Section 13836 of the Penal Code as grant conditions. The * * * advisory committee shall identify the criteria to be utilized in awarding the grants provided by this chapter before any funds are allocated.

In order to be eligible for funding pursuant to this chapter, the centers shall demonstrate an ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources which may be used to augment any state funds appropriated for purposes of this chapter. Each center receiving funds pursuant to this chapter shall make every attempt to qualify for any available federal funding.

State funds provided to establish centers shall be utilized when possible, as determined by the * * * advisory committee, to expand the program and shall not be expended to reduce fiscal support from other public or private sources. The centers shall maintain quarterly and final fiscal reports in a form to be prescribed by the * * * advisory committee. In granting funds, the * * * advisory committee shall give priority to centers which are operated in close proximity to medical treatment facilities. * *

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§ 1598.3. Report to legislature

The State Department of Social Services shall report to the Legislature, on or before January 1, 1980, with respect to the names of the organizations receiving funds pursuant to this chapter and the purposes for which the funds have been utilized.

(Added by Stats.1978, c. 1312, § 1.)

§ 1598.5. Grant program; funding; administration

The sum of one hundred thousand dollars (\$100,000) is hereby appropriated from the General Fund to the State Department of Social Services for expenditure during the 1978-79 fiscal year. Only 5 percent of such funds shall be used for the state administration of the grant program. After the 1978-79 fiscal year, the grant program provided pursuant to Section 1598.1 shall be funded through the regular budgetary process. The funds shall be administered through the Violent Crime Victim Assistance Commission, if created.

(Added by Stats.1978, c. 1312, § 1.)

California Health and Safety Code

ARTICLE 4. RAPE VICTIM COUNSELING CENTERS

§ 13837. Grants; standards or services; utilization for expansion of program; reports

The Office of Criminal Justice Planning shall provide grants to proposed and existing local rape, child sexual exploitation, and child sexual abuse victim counseling centers and prevention programs. Grant recipients shall provide appropriate in-person counseling and referral services during normal business hours, and maintain other standards or services which shall be determined to be appropriate by the advisory committee established pursuant to Section 13836 as grant conditions. Rape victim counseling centers shall provide a 24-hour telephone counseling service for sex crime victims * * *. The advisory committee shall identify the criteria to be utilized in awarding the grants provided by this chapter before any funds are allocated.

In order to be eligible for funding pursuant to this chapter, the centers shall demonstrate an ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources which may be used to augment any state funds appropriated for purposes of this chapter. Each center receiving funds pursuant to this chapter shall make every attempt to qualify for any available federal funding.

State funds provided to establish centers shall be utilized when possible, as determined by the advisory committee, to expand the program and shall not be expended to reduce fiscal support from other public or private sources. The centers shall maintain quarterly and final fiscal reports in a form to be prescribed by the administering agency. In granting funds, the advisory committee shall give priority to centers which are operated in close proximity to medical treatment facilities.

(Amended by Stats.1983, c. 373, p. —, § 1.)

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The people of the State of California do enact as follows:

SECTION 1. Section 1346 of the Penal Code is amended to read: 1346. (a) When a defendant has been charged with a violation of Section 243.4, 261, 261.5, 264.1, 285, 286, 288, 288a, or 289, where the victim is a person 15 years of age or less, the people may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape.

(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

(d) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the videotape of the victim's testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(e) Any videotape which is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) Any videotape made pursuant to this section shall be made available to the prosecuting attorney, the defendant, and his or her attorney for viewing during ordinary business hours.

(g) The tape shall be destroyed after five years have elapsed from the date of entry of judgment; provided, however, that if an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been rendered.

SEC. 2. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

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§ 273.5. Corporal injury; infliction by spouse upon his or her spouse or by person cohabiting with person of opposite sex

(a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person of the opposite sex with whom he or she is cohabiting, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 3 or 4 years, or in the county jail for not more than one year.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(Added by Stats.1977, c. 912, p. 2786, § 3. Amended by Stats.1980, c. 1117, p. 3589, § 3.)

§ 273.6. Willful and knowing violation of court order to prevent domestic violence or disturbance of peace; penalty

(a) Any willful and knowing violation of any of the following court orders, when obtained pursuant to Section 4359, 4458, 4516, 7020, or 7021 of the Civil Code, Section 527.6 of the Code of Civil Procedure, or Chapter 4 (commencing with Section 540) of Title 7 of Part 2 of the Code of Civil Procedure, shall be a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment:

(1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, or disturbing the peace of the other party, or other named family and household members.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the orders under subdivision (a) or (b).

(b) Any person who willfully and knowingly violates an order obtained pursuant to Section 527.6 of the Code of Civil Procedure shall be punishable as provided in subdivision (a). However, a person who has previously been convicted one or more times of violating an order obtained pursuant to Section 527.6 of the Code of Civil Procedure upon charges separately brought and tried, shall be imprisoned in the county jail for not more than one year. Subject to the discretion of the court, the prosecution shall have the opportunity to present witnesses and relevant evidence at the time of the sentencing of a defendant pursuant to this subdivision.

(c) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to the provisions listed in subdivisions (a) and (b).

(Added by Stats.1979, c. 795, p. 2713, § 12, operative July 1, 1980. Amended by Stats.1981, c. 182, p. 1104, § 5; Stats.1982, c. 423, p. —, § 2; Stats.1983, c. 1092, p. —, § 262, urgency, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

California Penal Code

CHAPTER 2.6. SPECIAL PROCEEDINGS IN CASES INVOLVING DOMESTIC VIOLENCE

- Sec.
- 1000.6. Application of chapter; misdemeanors; findings; notice and motion for diversion; declaration or statement of ineligibility; definitions.
 - 1000.7. Notice of application of chapter; referral of case to probation department.
 - 1000.8. Determination of eligibility; consent to proceedings; waiver of speedy trial; hearing; payment of expenses; exoneration of bail, undertaking or deposit; duration of diversion; statement of reasons; finality of decision.
 - 1000.9. Reinstitution of criminal proceedings; grounds; hearing; dismissal of criminal charges.
 - 1000.10. Records; expungement of arrest; limitations on use.
 - 1000.11. Statement to probation officer or community program worker or resulting information; inadmissibility in action or proceeding.

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§ 1000.6. Application of chapter; misdemeanors; findings; notice and motion for diversion; declaration or statement of ineligibility; definitions

(a) Upon the determination of the judge presiding, this chapter shall apply whenever a case is before the court upon an accusatory pleading for an act of domestic violence which is charged as, or reduced to, a misdemeanor and all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving violence within seven years prior to the alleged commission of the charged divertible offense.

(2) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(3) The defendant has not been diverted pursuant to this chapter within five years prior to the charged divertible offense.

Notwithstanding the foregoing, the provisions of this chapter are not applicable to a person who is charged with a violation of subdivision (a) of Section 245, Section 273.5, as added by Chapter 912 of the Statutes of 1977.

(b) The prosecuting attorney shall, and the defense attorney may, review his or her file to determine whether or not paragraphs (1) to (3), inclusive, of subdivision (a) are applicable to the defendant. If the defendant is found eligible, the prosecuting attorney shall . . . notify the court, the defendant, and the defense attorney, and the defense attorney may move that . . . the defendant be diverted pursuant to this chapter. If the defendant is found by the prosecuting attorney to be ineligible for diversion, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney.

(c) No admission of guilt shall be required of a defendant in order for this chapter to be applicable.

(d) As used in this chapter "domestic violence" means . . . intentionally or recklessly causing or attempting to cause bodily injury . . . to a family or household member or placing a family or household member in reasonable apprehension of imminent serious bodily injury to himself or herself or another.

(e) As used in this chapter "family or household member" means a spouse, former spouse, parent, . . . any other person related by consanguinity, or any person who regularly resides or who within the previous six months regularly resided in the household. "Family or household member" does not include a child.

(Added by Stats.1979, c. 913, p. 3141, § 1. Amended by Stats.1980, c. 1158, p. 3882, § 10.)

1980 Amendment. Substituted in subd. (a)(3) "defendant has not been diverted" for "defendant's record does not indicate that he or she has been diverted"; added the last paragraph of subd. (a); substituted in the first sentence of subd. (b) "notify the court, the defendant, and the defense attorney" for "recommend to the court"; substituted in the second sentence of subd. (b) "is found by the prosecuting attorney to be ineligible for diversion" for "is found ineligible"; deleted in the first sentence of subd. (e) "child" preceding "any other person"; inserted

the second sentence of subd. (e); and rewrote subd. (d), which previously read: "As used in this chapter 'domestic violence' means the infliction of corporal injury resulting in a traumatic condition upon a family or household member."

Library References

Husband and Wife — 107.
C.J.S. Husband and Wife § 221 et seq.
Words and Phrases (Perm.Ed.)

§ 1000.7. Notice of application of chapter; referral of case to probation department

(a) If the prosecuting attorney determines that this chapter may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of such determination. This notification shall include:

(1) A full description of the procedures of diversionary investigation.

(2) A general explanation of the roles and authorities of the court, the prosecuting attorney, the probation department, and the community program in the diversion process.

(3) A clear statement that the court may decide in a hearing not to divert such person and that he or she may have to stand trial for the alleged offense.

(4) A clear statement that, for the period of diversion, the divertee may be enjoined from contacting, and shall be enjoined from annoying, molesting, attacking, striking, threatening, harassing, sexually assaulting, battering, or disturbing the peace of, the victim.

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(5) A clear statement that should such person fail in meeting the terms of his or her diversion, or should he or she be convicted of any offense involving violence, he or she may be required, after a court hearing, to stand trial for the original alleged offense.

(6) An explanation of criminal record retention and disposition resulting from participation in the diversion and the divertee's rights relative to answering questions about his or her arrest and diversion following successful completion of the diversion program.

(b) If the defendant consents and waives his or her right to a speedy trial the court shall refer the case to the probation department. The probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior incidents of violence, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendation to the court.

(Added by Stats.1979, c. 913, p. 3141, § 1. Amended by Stats.1980, c. 1158, p. 3883, § 11.)

1980 Amendment. Inserted in subd. (a)(2) "the probation department"; inserted subd. (a)(4); and added subd. (b).

§ 1000.8. Determination of eligibility; consent to proceedings; waiver of speedy trial; hearing; payment of expenses; exoneration of bail, undertaking or deposit; duration of diversion; statement of reasons; finality of decision

(a) The court shall hold a hearing and, after consideration of the . . . probation department's report and any other information considered by the court to be relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and waives his or her right to a speedy trial and if the defendant should be diverted and referred for counseling. The court, in determining the defendant's eligibility for diversion, shall consider the nature and extent of the injury inflicted upon the victim, any prior incidents of domestic violence by the defendant, and any factors which would adversely influence the likelihood of successful completion of the diversion program. If the court does not deem the defendant a person who would be benefited by diversion, or if the defendant does not consent to participate, the proceedings shall continue as in any other case. If the court orders a defendant to be diverted, the court shall make inquiry into the financial condition of the defendant and upon a finding that the defendant is able in whole or part to pay the expense of such counseling the court may order him or her to pay for all or part of such expense.

(b) At such time that the defendant's case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of him or her shall be exonerated, and the court shall enter an order so directing.

(c) The period during which further criminal proceedings against a person may be diverted pursuant to this chapter shall be for no less than six months nor longer than two years.

The court shall set forth in writing or state on the record its reason for granting or denying diversion. The court's decision in such matter shall be final and shall not constitute an appealable order.

(Added by Stats.1979, c. 913, p. 3141, § 1. Amended by Stats.1980, c. 1158, p. 3883, § 12.)

1980 Amendment. Substituted in the first sentence of subd. (a) "the probation department's report" for "the recommendation of the prosecuting attorney, the motion of the defense attorney"; added the second sentence of subd. (a); and added the second paragraph of subd. (c).

§ 1000.9. Reinstitution of criminal proceedings; grounds; hearing; dismissal of criminal charges

If it appears to the prosecuting attorney, the court, or the probation department that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from counseling, or that he or she is convicted of any offense involving violence, after notice to the divertee, and upon request of the probation officer or on its own motion, the court shall hold a hearing to determine whether the criminal proceedings should be reinstituted. If the court finds that the divertee is not performing satisfactorily in the assigned program, or that the divertee is not benefiting from diversion, or the court finds that the divertee has been convicted of a crime as indicated above, the criminal case shall be referred back to the court for resumption of the criminal proceedings. If the divertee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.

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§ 1000.10. Records; expungement of arrest; limitations on use

Any records filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program the arrest upon which the diversion was based shall be deemed to have never occurred. The diveree may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or diverted for such offense. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the diveree's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate.

(Added by Stats.1979, c. 913, p. 3141, § 1.)

§ 1000.11. Statement to probation officer or community program worker or resulting information; inadmissibility in action or proceeding

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to any probation officer or community program worker during the process of determining the defendant's eligibility for diversion or subsequent to the granting of diversion, shall be admissible in any action or proceeding.

(Added by Stats.1979, c. 913, p. 3141, § 1.)

California Welfare and Institutions Code

CHAPTER 5. THE DOMESTIC VIOLENCE * * * CENTERS ACT

Sec.

18291. Definitions.

18294. Program design; services to victims.

18295. Additional services.

18296. Cooperation with other agencies; advocacy capacity.

18297. Community support and acceptance; volunteers.

18298. Bilingual personnel; battered spouses as staff members.

18304. Counties; authority to establish programs; combined programs by adjacent counties.

18305. Additional marriage license fees; use for county program.

18306. County financing of basic services.

18307. County domestic violence program special fund; carry over of funds.

Heading of Chapter 5 was amended by Stats.1980, c. 146, p. —, § 2, urgency, eff. June 4, 1980.

Continuation of Chapter 5 in full force and effect after June 30, 1980, see note under § 18290, post.

§ 18290. Legislative findings and declaration

The Legislature hereby finds and declares that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. There are hundreds of thousands of persons in this state who are regularly beaten. In many such cases, the acts of domestic violence lead to the death of one of the involved parties. Victims of domestic violence come from all socioeconomic classes and ethnic groups, though it is the poor who suffer most from marital violence, since they have no immediate access to private counseling and shelter for themselves and their children. Children, even when they are not physically assaulted, very often suffer deep and lasting emotional effects, and it is most often the children of those parents who commit domestic violence that continue the cycle and abuse their spouses.

The Legislature further finds and declares that there is a high incidence of deaths and injuries sustained by law enforcement officers in the handling of domestic disturbances. Police arrests for domestic violence are low, and victims are reluctant to press charges or make citizens arrests. Furthermore, instances of domestic violence are considered to be the single most unreported crime in the state.

It is the intention of the Legislature to begin to explore and determine ways of achieving reductions in serious and fatal injuries to the victims of domestic violence and begin to clarify the problems, causes, and cures of domestic violence. In order to achieve these results, it is the intention of the Legislature that the state shall * * * support projects in several areas throughout the state for the purpose of aiding victims of domestic violence by providing them a place to escape the destructive environment. * * *

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§ 18291. Definitions

Definitions.

(a) "Domestic violence" means abuse perpetrated by and committed against a family or household member.

(b) "Family or household member", means spouse, former spouse, or any other adult person who regularly resides in the household and has sexual relations with another family or household member residing in the household, or who within the last six months regularly resided in the household during which time he or she had sexual relations with another family or household member presently residing in the household.

(Added by Stats.1980, c. 146, p. 340, § 5, urgency, eff. June 4, 1980.)

1980 Legislation.

Former § 18291 was repealed by Stats.1980, c. 146, p. 340, § 4.

§ 18293. Funding; eligibility; priority; approval and monitoring of programs; physically handicapped victims

In order to be eligible for funding pursuant to this chapter, the * * * programs shall demonstrate their ability to receive and make use of any funds available from governmental, voluntary, philanthropic, or other sources which may be used to augment any state or county funds appropriated for the purposes of this chapter. Each * * * program shall make every attempt to qualify the * * * program for any available federal funding.

No provision of this section is intended to prohibit programs receiving funds pursuant to this chapter, from receiving additional funds from any other public or private source. * * * Funds provided * * * pursuant to this chapter shall not be * * * used to reduce the * * * financial support from other public or private sources.

Proposed or existing programs which meet the requirements set forth in Section 18294, shall receive funding pursuant to this chapter upon the approval of the local board of supervisors. Priority for funding shall be given to agencies and organizations whose primary function is to administer domestic violence programs. Prior to approving a program or programs for such funding, the board shall consult with individuals and groups which have expertise in the problems of domestic violence and in the operation of domestic violence programs including operations of existing domestic violence programs. Upon approving one or more programs for funding, the board shall direct the county treasurer to disburse moneys from the county's domestic violence program special fund and for funding, the board shall designate a local agency to monitor the program or programs. Such monitoring shall include information regarding the number of persons requesting services; the number of persons receiving services according to the type of services provided; and the need, if any, for additional services or staffing.

Programs which receive funding from the provisions of this chapter shall, to the extent feasible, provide services to physically handicapped victims of domestic violence. If the program cannot provide the services, then the program's staff, to the extent feasible, shall assist in referring the handicapped person to other programs and services in the community where assistance may be obtained.

§ 18294. Program design; services to victims

Such programs shall be designed to provide the following basic services to victims of domestic violence and their children:

- Shelter on a 24 hours a day, seven days a week basis.
- A 24 hours a day, seven days a week switchboard for crisis calls.
- Temporary housing and food facilities.
- Psychological support and peer counseling.
- Referrals to existing services in the community and followup on the outcome of the referrals.

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(f) A drop-in center to assist victims of domestic violence who have not yet made the decision to leave their homes, or who have found other shelter but who have a need for support services.

(g) Arrangements for school age children to continue their education during their stay at the center.

(h) Emergency transportation to the shelter, and when appropriate, arrangements with local law enforcement for assistance in providing such transportation.

(Added by Stats.1980, c. 146, p. 341, § 7, urgency, eff. June 4, 1980.)

1981 Legislation.

Former § 18294 was repealed by Stats.1981, c. 714, p. —, § 475.

Section 475 of Stats.1981, c. 714, p. —, provides, in part:

"The repeal made by this section shall not affect the existence or validity of Section 18294 of the Welfare and Institutions Code, as added by Chapter 146 of the Statutes of 1980."

Library References

Social Security and Public Welfare — 4.10.
C.J.S. Social Security and Public Welfare §§ 11, 18.

§ 18295. Additional services

In addition to the services required in Section 18294, to the extent possible, and in conjunction with already existing community services, the centers shall provide a method of obtaining the following services for the victims of domestic violence:

(a) Medical care.

(b) Legal assistance.

(c) Psychological support and counseling.

(d) Information regarding reeducation, marriage and family counseling, job counseling and training programs, housing referrals and other available social services.

(Added by Stats.1980, c. 146, p. 341, § 8, urgency, eff. June 4, 1980.)

1981 Legislation.

Former § 18295 was repealed by Stats.1981, c. 714, p. —, § 476.

Section 476 of Stats.1981, c. 714, p. —, provides, in part:

"The repeal made by this section shall not affect the existence or validity of Section 18295 of the Welfare and Institutions Code, as added by Chapter 146 of the Statutes of 1980."

§ 18296. Cooperation with other agencies; advocacy capacity

The staff of the programs shall work with social service agencies, schools, and law enforcement agencies in an advocacy capacity for those served by the programs.

(Added by Stats.1980, c. 146, p. 342, § 9, urgency, eff. June 4, 1980.)

§ 18297. Community support and acceptance; volunteers

The staff of each program shall attempt to achieve community support and acceptance of the program by advocating the program to community representatives and groups within the community. Volunteers shall be trained and used to maximum capacity in the delivery of services.

(Added by Stats.1980, c. 146, p. 342, § 10, urgency, eff. June 4, 1980.)

1981 Legislation.

Former § 18297 was repealed by Stats.1981, c. 714, p. —, § 478.

Section 478 of Stats.1981, c. 714, p. —, provides, in part:

"The repeal made by this section shall not affect the existence or validity of Section 18297 of the Welfare and Institutions Code, as added by Chapter 146 of the Statutes of 1980."

§ 18298. Bilingual personnel; battered spouses as staff members

Inasmuch as the programs are to serve a variety of cultural backgrounds, to the extent feasible, a portion of the program's personnel shall be bilingual. An effort shall be made to recruit formerly battered spouses as staff members.

(Added by Stats.1980, c. 146, p. 342, § 11, urgency, eff. June 4, 1980.)

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§ 18304. Counties; authority to establish programs; combined programs by adjacent counties

Any county may establish a program for reducing the incidence of domestic violence in the county by establishing or funding domestic violence programs which meet the requirements of this chapter.

Geographically adjacent counties may combine their respective domestic violence program funds in order to establish one or more programs meeting the requirements of this chapter, in order to provide services to the clients of each county that combines its funds with another county.

(Added by Stats.1980, c. 146, p. 342, § 12, urgency, eff. June 4, 1980.)

§ 18305. Additional marriage license fees; use for county program

At the time of issuance of a marriage license pursuant to Section 26840 of the Government Code, * * * thirteen dollars (\$13) of each fee paid shall be collected by the county clerk for deposit at the county's election into the county domestic violence programs special fund. The fees collected in this special fund shall be disbursed to approved programs on a yearly or more frequent basis commencing July 1, 1980.

The county clerk shall, at the request of the board of supervisors, deposit * * * thirteen dollars (\$13) of each fee into a county domestic violence programs special fund. The county domestic violence programs special fund shall fund programs established pursuant to Section 18304. No more than 10 percent of the funds shall be expended for the administrative costs associated with the collection and segregation of the additional marriage license fees, administration of the county special fund, monitoring of the programs, and meeting the other administrative requirements imposed by this chapter. Counties which do not participate in the establishing or funding of domestic violence programs pursuant to this chapter, shall be entitled to retain up to 4 percent of the funds for the administrative costs associated with the collection and segregation of the additional marriage license fees and the deposit of these fees in the General Fund in the State Treasury. Any money not used by the county for programs described pursuant to this chapter, shall be deposited in the General Fund.

The * * * Controller shall ensure that the amount deposited in the General Fund pursuant to this section shall be obligated to repay any General Fund appropriation made in the 1980 Budget Act; and thereafter shall be used to finance domestic violence programs in those counties where the revenue generated pursuant to this chapter does not exceed two thousand dollars (\$2,000) per year.

(Added by Stats.1980, c. 146, p. 342, § 13, urgency, eff. June 4, 1980. Amended by Stats.1982, c. 522, p. —, § 3.)

§ 18306. County financing of basic services

In the event that a county does not have sufficient funds in the county domestic violence program special fund to finance all the basic services specified in Section 18294 and community resources are not available to finance such basic services, the county may finance one or more of such basic services.

(Added by Stats.1980, c. 538, p. 1490, § 2, urgency, eff. July 17, 1980.)

For another section of the same number, added by Stats.1978, c. 1390, p. 4602, § 1, see § 18306 in Chapter 5.3 in the Main Volume.

Library References

Counties — 158.
C.J.S. Counties § 234.

§ 18307. County domestic violence program special fund; carry over of funds

Notwithstanding Section 18305, a county may carry over funds deposited in a county domestic violence program special fund for a period of no more than three years if the county board of supervisors has adopted a plan to implement a domestic violence program which requires the accumulation of such funds.

(Added by Stats.1980, c. 538, p. 1490, § 3, urgency, eff. July 17, 1980.)

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California Evidence Code

ARTICLE 8.5 SEXUAL ASSAULT VICTIM-COUNSELOR PRIVILEGE [NEW]

Sec.

1035. Victim.

1035.2 Sexual assault victim counselor.

1035.4 Confidential communication between the sexual assault counselor and the victim.

1035.6 Holder of the privilege.

1035.8 Sexual assault victim-counselor privilege.

1036. Claim of privilege by sexual assault victim counselor.

1036.2 Sexual assault.

Article 8.5 was added by Stats.1980, c. 917, p. 2916, § 2.

§ 1035. Victim

As used in this article, "victim" means a person who consults a sexual assault victim counselor for the purpose of securing advice or assistance concerning a mental, physical, or emotional condition caused by a sexual assault.
(Added by Stats.1980, c. 917, p. 2916, § 2.)

SECTION 1. Section 1035.2 of the Evidence Code is amended to read:

1035.2. As used in this article, "sexual assault victim counselor" means a person who is engaged in any office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault and who has received a certificate evidencing completion of a training program in the counseling of sexual assault victims issued by a counseling center that meets the criteria for the award of a grant established pursuant to Section 13837 of the Penal Code and who meets one of the following requirements:

(a) Be a psychotherapist as defined in Section 1010; or have a master's degree in counseling or a related field; or have one year of counseling experience, at least six months of which is in rape crisis counseling.

(b) Have 40 hours of training as described below and be supervised by an individual who qualifies as a counselor under subdivision (a). The training, to be supervised by a person qualified under subdivision (a), shall include, but not be limited to, the following areas: law, medicine, societal attitudes, crisis intervention and counseling techniques, role playing, referral services, and sexuality.

SEC. 2. Section 1035.4 of the Evidence Code is amended to read:

1035.4. As used in this article, "confidential communication between the sexual assault counselor and the victim" means information transmitted between the victim and the sexual assault counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the

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sexual assault counselor is consulted. The term includes all information regarding the facts and circumstances involving the alleged sexual assault and also includes all information regarding the victim's prior or subsequent sexual conduct, and opinions regarding the victim's sexual conduct or reputation in sexual matters.

The court may compel disclosure of information received by the sexual assault counselor which constitutes relevant evidence of the facts and circumstances involving an alleged sexual assault about which the victim is complaining and which is the subject of a criminal proceeding if the court determines that the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled. The court may also compel disclosure in proceedings related to child abuse if the court determines the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled.

When a court is ruling on a claim of privilege under this article, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and such other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged and must not be disclosed, neither he or she nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers.

If the court determines certain information shall be disclosed, the court shall so order and inform the defendant. If the court finds there is a reasonable likelihood that particular information is subject to disclosure pursuant to the balancing test provided in this section, the following procedure shall be followed:

(1) The court shall inform the defendant of the nature of the information which may be subject to disclosure.

(2) The court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the sexual assault counselor regarding the information which the court has determined may be subject to disclosure.

(3) At the conclusion of the hearing, the court shall rule which items of information, if any, shall be disclosed. The court may make an order stating what evidence may be introduced by the defendant and the nature of questions to be permitted. The defendant may then offer evidence pursuant to the order of the court. Admission of evidence concerning the sexual conduct of the complaining witness is subject to Sections 352, 782, and 1103.

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§ 1035.6 Holder of the privilege

As used in this article, "holder of the privilege" means:

- (a) The victim when such person has no guardian or conservator.
 - (b) A guardian or conservator of the victim when the victim has a guardian or conservator.
 - (c) The personal representative of the victim if the victim is dead.
- (Added by Stats.1980, c. 917, p. 2916, § 2.)

§ 1035.8 Sexual assault victim-counselor privilege

A victim of a sexual assault, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a sexual assault victim counselor if the privilege is claimed by:

- (a) The holder of the privilege;
 - (b) A person who is authorized to claim the privilege by the holder of the privilege; or
 - (c) The person who was the sexual assault victim counselor at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure.
- (Added by Stats.1980, c. 917, p. 2916, § 2.)

Library References:
Witnesses § 214.5.
C.J.S. Witnesses § 254.

§ 1036 Claim of privilege by sexual assault victim counselor

The sexual assault victim counselor who received or made a communication subject to the privilege under this article shall claim the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege under subdivision (c) of Section 1035.8.

(Added by Stats.1980, c. 917, p. 2916, § 2.)

§ 1036.2 Sexual assault

As used in this article, "sexual assault" includes:

- (a) Rape, as defined in Section 261 of the Penal Code;
 - (b) Unlawful sexual intercourse, as defined in Section 261.5 of the Penal Code;
 - (c) Rape in concert with force and violence, as defined in Section 264.1 of the Penal Code;
 - (d) Sodomy, as defined in Section 286 of the Penal Code, except a violation of subdivision (e) of that section;
 - (e) A violation of Section 288 of the Penal Code;
 - (f) Oral copulation, as defined in Section 288a of the Penal Code, except a violation of subdivision (e) of that section;
 - (g) Annoying or molesting a child under 18, as defined in Section 647a of the Penal Code; or
 - (h) Any attempt to commit any of the above acts.
- (Added by Stats.1980, c. 917, p. 2916, § 2.)

Category	Citation
1. Victim Compensation Program	24-4.1-100.1 et seq.
1.1 Responsible Agency	24-4.1-103
1.2 Eligible Claimants	24-4.1-108(1)(a), 24-4.1-111
1.3 Losses Covered	24-4.1-109
1.4 Minimum and Maximum Award	24-4.1-109(b),(c)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	24-4.1-108(b),(c)
1.7 Filing of Claim - Time Limit	24-4.1-108(f)
1.8 Emergency Award	24-4.1-112
1.9 Funding	24-4.1-117 et seq.
2. Restitution	
2.1 Sentencing Option	
2.2 Mandatory Condition of Probation	16-11-204.5(1)
2.3 Mandatory Condition of Parole	17-2-201(5)(c)(I)
2.4 Mandatory Sentence	17-28-101 (restitution to be ordered whenever feasible)
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Colorado Revised Statutes

Title 24

ARTICLE 4.1

Colorado Crime Victim Compensation Act

24-4.1-100.1.	Short title.	24-4.1-112.	Emergency awards.
24-4.1-101.	Legislative declaration.	24-4.1-113.	Fees.
24-4.1-102.	Definitions.	24-4.1-114.	Assignment, attachment, or garnishment of award.
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24-4.1-104.	District attorney to assist board.	24-4.1-116.	Subrogation.
24-4.1-105.	Application for compensation.	24-4.1-117.	Fund created — control of fund.
24-4.1-106.	Hearings.	24-4.1-118.	Court administrator custodian of fund — disbursements.
24-4.1-107.	Regulations.	24-4.1-119.	Costs levied on criminal actions.
24-4.1-108.	Awarding compensation.	24-4.1-120.	Effective dates of provisions of this article.
24-4.1-109.	Losses compensable.	24-4.1-121.	Repeal.
24-4.1-110.	Recovery from collateral source.		
24-4.1-111.	Compensation to relatives.		

24-4.1-100.1. Short title. This article shall be known and may be cited as the "Colorado Crime Victim Compensation Act".

Source: L. 82, p. 364, § 1.

24-4.1-101. Legislative declaration. The general assembly hereby finds, determines, and declares that victims of crime suffer economic detriment as a result of such crime and that victims may have no enforceable remedies at law.

Source: L. 81, p. 1135, § 5.

24-4.1-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Applicant" means any victim of a compensable crime who has resided in this state for at least thirty days prior to the commission of the crime and who applies to the fund for compensation under this article. In the case of such victim's death, the term includes any person who was his dependent at the time of the death of that victim.

(2) "Board" means the crime victim compensation board in each judicial district.

(3) "Child" means an unmarried person who is under eighteen years of age. The term includes a posthumous child, a stepchild, or an adopted child.

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24-4.1-102. Definitions. (4) "Compensable crime" means an intentional, knowing, reckless, or criminally negligent act of a person or any act in violation of section 42-4-1202 (1) or (1.5), C.R.S., that results in residential property damage to or bodily injury or death of another person or results in loss of or damage to eyeglasses, dentures, hearing aids, or other prosthetic or medically necessary devices and which, if committed by a person of full legal capacity, is punishable as a crime in this state. The term includes federal offenses committed in this state.

(5) "Dependent" means relatives of a deceased victim who, wholly or partially, were dependent upon the victim's income at the time of death or would have been so dependent but for the victim's incapacity due to the injury from which the death resulted.

(6) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss. The term does not include noneconomic detriment.

(7) "Fund" means the crime victim compensation fund as established in each judicial district.

(8) "Injury" means actual bodily harm and, with respect to a victim, includes pregnancy.

(8.5) "Property damage" means damage to windows, doors, locks, or other security devices of a residential dwelling and includes damage to a leased residential dwelling.

(9) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes said relationships that are created as a result of adoption.

(10) "Victim" means a person who suffers property damage as a result of a compensable crime; is killed or injured in this state as a result of a compensable crime perpetrated or attempted against him; is killed or injured in another state as a result of a compensable crime that began in this state; or is killed or injured in this state while attempting to assist a person against whom a compensable crime is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable man under the circumstances.

24-4.1-103. Crime victim compensation board - creation. (1) There is hereby created in each judicial district a crime victim compensation board. Each board shall be composed of three members to be appointed by the district attorney. The district attorney shall designate one of the members as chairman. To the extent possible, members shall fairly reflect the population of the judicial district.

(2) The term of office of each member of the board shall be three years; except that, of those members first appointed, one shall be appointed for a three-year term, one for a two-year term, and one for a one-year term. All vacancies, except through the expiration of term, shall be filled for the unexpired term only. Each member may be reappointed once.

(3) Members of the board shall receive no compensation but are entitled to be reimbursed for travel expenses at the rate authorized for state employees.

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24-4.1-104. District attorney to assist board. The district attorney and his legal and administrative staff shall assist the board in the performance of its duties pursuant to this article.

Source: L. 81, p. 1137, § 5.

24-4.1-105. Application for compensation. (1) A person who may be eligible for compensation under this article may apply to the board in the judicial district in which the crime was committed. In a case in which the person entitled to apply is a minor, the application may be made on his behalf by his parent or guardian. In a case in which the person entitled to apply is mentally incompetent, the application may be made on his behalf by his parent, conservator, or guardian or by any other individual authorized to administer his estate.

(2) In order to be eligible for compensation under this article, the applicant shall submit reports, if reasonably available, from any physician who has treated or examined the victim at the time of or subsequent to the victim's injury or death. The report shall be in relation to the injury for which compensation is claimed. If, in the opinion of the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or the report on the cause of death of the victim by a medical expert would be of material aid to its determination, the board may order the reports.

24-4.1-105. Application for compensation. (2) (a) In order to be eligible for compensation under this article, the applicant shall submit reports, if reasonably available, from any physician who has treated or examined the victim at the time of or subsequent to the victim's injury or death. The report shall be in relation to the injury for which compensation is claimed. If, in the opinion of the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or the report on the cause of death of the victim by a medical expert would be of material aid to its determination, the board may order the reports.

(b) In order to be eligible for compensation for property damage under this article, the applicant shall submit a report or case number, if reasonably available, from a law enforcement agency which shall set forth the nature of the property damage which is the result of a compensable crime.

(3) If the applicant makes any false statement as to a material fact, he shall be ineligible for an award pursuant to this article.

24-4.1-106. Hearings. (1) The board, in its discretion, may conduct a hearing upon any application submitted to it. All hearings conducted by the board and appeals therefrom shall be held pursuant to sections 24-4-105 and 24-4-106.

(2) The burden of proof is upon the applicant to show that the claim is reasonable and is compensable under the terms of this article. The standard of proof is by a preponderance of the evidence.

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(3) 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. The fact that the identity of the assailant is unknown or that the assailant has not been prosecuted or convicted shall not raise a presumption that the claim is invalid.

(4) Orders and decisions of the board are final.

(5) Review of an order or decision of the board may be made in accordance with the Colorado rules of civil procedure.

Source: L. 81, p. 1137, § 5.

24-4.1-107. Regulations. In the performance of its functions, the board, pursuant to article 4 of this title, is authorized to make, rescind, and amend regulations prescribing the procedures to be followed in the filing of applications and in proceedings under this article.

24-4.1-108. Awarding compensation. (1) (a) The person is a victim or a dependent of a victim or a successor in interest under the "Colorado Probate Code" of a compensable crime which was perpetrated on or after July 1, 1982, and which resulted in a loss;

(b) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death of or injury to the victim within seventy-two hours after its perpetration, unless the board finds good cause exists for the failure of notification;

(c) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the board has found good cause exists for the failure to cooperate;

(d) The victim and his assailant are not sharing the same household;

(e) The death of or injury to the victim was not substantially attributable to his wrongful act or substantial provocation of his assailant; and

(f) The application for an award of compensation under this article is filed with the board within one year of the date of injury to the victim or within such further extension of time as the board, for good cause shown, allows.

(1.5) A person is entitled to an award of compensation for property damage under this article if:

(a) The person is a victim of a compensable crime which was perpetrated on or after July 1, 1983, and which resulted in property damage;

(b) The appropriate law enforcement officials were notified of the perpetration of the crime causing property damage within seventy-two hours after its perpetration, unless the board finds good cause exists for the failure of notification;

(c) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the board has found good cause exists for the failure to cooperate; and

(d) The application for an award of compensation for property damage under this article is filed with the board within six months of the date of property damage or within such further extension of time as the board, for good cause shown, allows.

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(2) The board may waive any of the requirements set forth in this section or order a denial or reduction of an award if, in the interest of justice, it is so required.

(3) Upon a finding by the board that compensation should be awarded, the board shall submit a statement of award to the court administrator who shall remit payment in accordance with the statement of award.

Source: L. 81, p. 1138, § 5.

24-4.1-109. Losses compensable. (1) Losses compensable under this article resulting from death of or injury to a victim include:

(a) Reasonable medical and hospital expenses and expenses incurred for dentures, eyeglasses, hearing aids, or other prosthetic or medically necessary devices;

(b) Loss of earnings;

(c) Outpatient care;

(d) Homemaker and home health services;

(e) Burial expenses;

(f) Loss of support to dependents.

24-4.1-109. Losses compensable. (1.5) (a) Losses compensable under this article resulting from property damage include:

(I) Repair or replacement of property damaged as a result of a compensable crime; or

(II) Payment of the deductible amount on a residential insurance policy in an amount not to exceed one hundred dollars.

(b) The victim's recovery under this article due to property damage shall not exceed two hundred and fifty dollars for each compensable crime; but in no case shall a loss be compensable if the aggregate property damages are less than twenty-five dollars.

(2) (a) Pain and suffering or property damage other than residential property damage; or

(b) Aggregate damages to the victim or to the dependents of a victim exceeding ten thousand dollars; or

(c) Aggregate damages of less than twenty-five dollars.

24-4.1-110. Recovery from collateral source. (3) If a defendant is ordered to pay restitution under section 16-11-204.5, 17-28-102, 18-4-304, or 18-4-401, C.R.S., to a person who has received compensation awarded under this article, an amount equal to the compensation awarded shall be transmitted from such restitution to the board for allocation to the fund.

24-4.1-111. Compensation to relatives. (1) A relative of a victim, even though he was not a dependent of the victim, is eligible for compensation for reasonable medical or burial expenses for the victim, if:

(a) Such expenses were paid by him; and

(b) He files a claim in the manner provided in this article.

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24-4.1-112. Emergency awards. (1) The board may order an emergency award to the applicant pending a final decision in the claim if it appears to the board, prior to taking action upon the claim, that undue hardship will result to the applicant if immediate payment is not made. The amount of such award shall not exceed five hundred dollars and shall be deducted from any final award made as a result of the claim.

(2) If the amount of such emergency award exceeds the sum the board would have awarded pursuant to this article, such excess shall be repaid by the recipient.

Source: L. 81, p. 1139, § 5.

24-4.1-113. Fees. No fee may be charged to the applicant by the board in any proceeding under this article.

Source: L. 81, p. 1139, § 5.

24-4.1-114. Assignment, attachment, or garnishment of award. No compensation payable under this article, prior to actual receipt thereof by the person or beneficiary entitled thereto or his legal representative, shall be assignable or subject to execution, garnishment, attachment, or any other process, including process to satisfy an order or judgment for support or alimony.

24-4.1-114.5. Limitations on characterization of award as income. No compensation payable to an applicant under this article shall be included in the applicant's Colorado adjusted gross income as determined pursuant to section 39-22-110, C.R.S.; nor shall it be considered as income, property, or support for the purposes of determining the eligibility of the applicant for public assistance or the amount of assistance payments pursuant to section 26-2-108, C.R.S.

24-4.1-115. Survival of rights. The rights to compensation created by this article are personal and shall not survive the death of the person or beneficiary entitled to them; except that, if death occurs after an application for compensation has been filed with the board, the proceeding shall not abate but may be continued by the legal representative of the decedent's estate.

Source: L. 81, p. 1139, § 5.

24-4.1-116. Subrogation. The acceptance of an award made pursuant to this article shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant.

Source: L. 81, p. 1139, § 5.

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24-4.1-117. Fund created - control of fund. (1) The crime victim compensation fund is hereby established in the office of the court administrator of each judicial district for the benefit of eligible applicants under this article.

(2) The fund shall consist of all moneys paid as a cost levied on criminal actions, as provided in section 24-4.1-119; any federal moneys available to state or local governments for victim compensation; all moneys received from any action or suit to recover damages from an assailant for a compensable crime which was the basis for an award of, and limited to, compensation received under this article; and any restitution paid by an assailant to a victim for damages for a compensable crime which was the basis for an award received under this article, and for damages for which the victim has received an award of, and limited to, compensation received under this article.

(3) All moneys deposited in the fund shall be deposited in an interest-bearing account, which shall be no less secure than those used by the state treasurer, and which shall yield the highest interest possible. All interest earned by moneys in the fund shall be credited to the fund.

(4) At the conclusion of each fiscal year, all moneys remaining in the fund shall remain in the fund for use the succeeding year.

(5) All moneys deposited in the fund shall be used solely for the compensation of victims pursuant to this article; except that the district attorney and the court administrator may use an aggregate of no more than five percent of the total amount of moneys in the crime victim compensation fund for administrative costs incurred pursuant to this article.

Source: L. 81, p. 1139, § 5.

24-4.1-118. Court administrator custodian of fund - disbursements. The court administrator of each judicial district shall be the custodian of the fund and all disbursements from the fund shall be paid by him upon written authorization of the board or the court.

24-4.1-119. Costs levied on criminal actions. (1) (a) Except as provided in paragraphs (c) and (d) of this subsection (1), a cost of fifty dollars for felonies, thirty dollars for misdemeanors, and fifteen dollars for class 1 and class 2 traffic offenses is hereby levied on each criminal action resulting in a conviction or in a deferred judgment and sentence, as provided for in section 16-7-403, C.R.S., which criminal action is charged pursuant to state statute. These costs shall be paid to the clerk of the court by the defendant. Each clerk shall keep the costs so received in a separate victim compensation fund to be used pursuant to this article.

(b) The costs required by paragraph (a) of this subsection (1) shall not be levied on criminal actions which are charged pursuant to the penalty assessment provisions of section 33-6-127 or 42-4-1501, C.R.S. 1973.

(c) A cost of twenty-five dollars is hereby levied on every criminal action resulting in a conviction or in a deferred judgment and sentence, as provided for in section 16-7-403, C.R.S. 1973, of a violation of section 42-4-1202 (1), C.R.S. 1973.

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(d) A cost of thirty dollars is hereby levied on every action upon the filing of a petition alleging a child is delinquent which results in an adjudication sustaining the petition, a reserved adjudication, or a continued petition pursuant to section 19-3-106, C.R.S. This cost shall be paid to the clerk of the court, who shall deposit same in the victim compensation fund established in paragraph (a) of this subsection (1).

(2) For purposes of determining the order of priority for payments required of a defendant pursuant to section 16-11-204 (2.5), C.R.S. 1973, the payments to the victim compensation fund required under this article shall be the first obligation of the defendant.

(3) The provisions of sections 16-11-501 and 16-11-502, C.R.S. 1973, shall be applicable as to the collection of costs levied pursuant to this article.

24-4.1-120. Effective dates of provisions of this article. Sections 24-4.1-117 to 24-4.1-120 originally took effect July 1, 1981. Sections 24-4.1-101 to 24-4.1-116 originally took effect July 1, 1982.

Source: L. 81, p. 1140, § 5.

24-4.1-121. Repeal. This article is repealed, effective July 1, 1985.

Source: L. 81, p. 1140, § 5.

* * *

16-11-204.5. Restitution as a condition of probation. (1) As a condition of every sentence to probation, the court shall provide that the defendant make restitution to the victim of his conduct for the actual damages which were sustained. Such restitution shall be ordered by the court as a condition of probation. The amount of such restitution shall be based on the actual, pecuniary damages sustained by the victim, the ability of the defendant to pay, and the defendant's obligations to support his dependents and to meet other family obligations; except that the making of restitution may be waived totally if the court finds that such restitution will work an undue hardship on the defendant or his family. The court shall fix the manner and time of performance.

(2) If the defendant fails to pay the restitution, he shall be returned to the sentencing court which, upon proof of failure to pay, may:

- (a) Modify the amount of the restitution;
- (b) Extend the period of probation;
- (c) Order the defendant committed to jail with work release privileges;

or

(d) Revoke probation and impose the sentence otherwise required by law.

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17-26-128. Employment of county jail prisoners. (1) Any county may provide a program whereby any person sentenced to the county jail upon conviction for a crime, nonpayment of any fine or forfeiture, or contempt of court may be granted by the court the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

- (a) Seeking employment;
- (b) Working at his employment;
- (c) Conducting his own business or other self-employed occupation including housekeeping and attending to the needs of the family;
- (d) Attendance at an educational institution; or
- (e) Medical treatment.

(5) By order of the court, the wages or salaries of employed prisoners shall be disbursed by the sheriff for the following purposes, in the order stated:

- (a) Restitution or reparation, or both, to the victim of his conduct for the damage or injury which was sustained, the amount and manner of performance thereof which shall be fixed by the court and shall not exceed an amount the defendant can or will be able to pay;
- (b) The board of the prisoner;
- (c) Necessary travel expense to and from work and other incidental expenses of the prisoner;
- (d) Support of the prisoner's dependents, if any;
- (e) Payment, either in full or ratably, of the prisoner's obligations acknowledged by him in writing or which have been reduced to judgment;
- (f) The balance, if any, to the prisoner upon his discharge.

* * *

PART 2

STATE BOARD OF PAROLE

17-2-201. State board of parole. (1) There is hereby created a state board of parole, referred to in this part 2 as the "board", which shall consist of five members. The members of the board shall be appointed by the governor, and they shall devote their full time to their duties as members of such board. The members of the board shall have knowledge of parole, rehabilitation, correctional administration, and the functioning of the criminal justice system. The members of the board shall have at least five years' education or experience, or a combination thereof, in corrections, parole, probation, law, psychology, education, or related fields. The terms of office of the four members of the board appointed under this section prior to July 1, 1977, shall continue until expiration of their respective terms. The governor shall appoint the additional member to serve for a three-year term. Thereafter, all members shall serve for six-year terms. All board members may succeed themselves.

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(b) Conditions imposed for parole may include, but are not limited to, requiring that the offender pay reasonable costs of supervision of parole.

(c) (I) As a condition of every parole, the board shall provide that the offender make restitution to the victim of his conduct for the actual damages which were sustained. Such restitution shall be ordered by the board as a condition of parole. The amount of such restitution shall be as determined by the court pursuant to section 16-11-102 (4), C.R.S. 1973; except that the making of restitution may be waived by the board totally or partially if it finds that such restitution will work an undue hardship on the offender or his family. The board shall fix the manner and time of performance.

(II) If the offender fails to pay the restitution, he shall be returned to the board which, upon proof of failure to pay, may:

(A) Modify the amount of the restitution;

(B) Extend the period of parole, subject to section 17-22.5-103 and to the parole provisions of section 18-1-105, C.R.S. 1973;

(C) Revoke the parole.

(III) If, at the time of the parole of the offender, the victim of his conduct cannot reasonably be located, or the victim declines to accept restitution, the offender still shall make restitution; except that such restitution shall be made to the board. In the case where the victim is deceased, the defendant shall still make restitution and such restitution shall be made to the deceased person's spouse or children, or if there are none, then such restitution shall be made to the board. The board shall transmit such moneys to the state treasurer who shall credit the same to the "victim restitution fund", which fund is hereby created. Such moneys shall be used to assist victims of crime as the board, by rule adopted pursuant to article 4 of title 24, C.R.S. 1973, may deem appropriate. The controller, upon presentation of vouchers properly drawn and signed by the executive director of the department of corrections, or his designee, shall issue warrants drawn upon the victim restitution fund. All moneys so deposited in the victim restitution fund shall remain in such fund to be used for the sole purpose of assisting victims of crime; except that an amount equal to five percent of the total restitution made during the preceding fiscal year, not to exceed a total amount of fifteen thousand dollars for each fiscal year, may be used by the board to defray any administrative costs incurred by the board in implementing the provisions of this section.

(6) The board has the authority at any time after the period of any parole is fixed to shorten the period thereof or to lengthen said period within the limits specified in subsection (5) of this section.

(7) Except for the power of a hearing officer or judge of a court of record to determine the existence of probable cause, as provided in section 17-2-103 (4), the board has exclusive power to conduct all proceedings involving an application for revocation of parole.

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ARTICLE 28

Restitution to Victims of Crime

Editor's note: Prior to the repeal and reenactment of this title in 1977, the substantive provisions of this article were contained in article 28 of title 27. (Compare historical record prior to 1977 of article 28 of title 27, C.R.S. 1973, as amended through L. 77.)

17-28-101. Legislative declaration.

17-28-102. Establishment of restitution programs.

17-28-101. Legislative declaration. (1) The general assembly finds and declares that:

(a) The number of victims of crime increases daily;

(b) These victims suffer undue hardship by virtue of physical injury or loss of property;

(c) Persons found guilty of causing such suffering should be under a moral and legal obligation to make adequate restitution to those injured by their conduct;

(d) Restitution provided by criminal offenders to their victims may be an instrument of rehabilitation for offenders.

(2) The purpose of this article is to encourage the establishment of programs to provide for restitution to victims of crime by offenders who are sentenced, or who have been released on parole, or who are being held in local correctional and detention facilities. It is the intent of the general assembly that restitution be utilized wherever feasible to restore losses to the victims of crime and to aid the offender in reintegration as a productive member of society.

17-28-102. Establishment of restitution programs. The department may, as a means of assisting in the rehabilitation of persons committed to its care, establish programs and procedures whereby such persons may contribute toward restitution of those persons injured as a consequence of their criminal acts. The department shall report to the general assembly its progress in implementing this article.

* * *

13-33-102. Fees of witnesses. (1) Witnesses shall receive for attending in any court of record, except municipal courts, court commissioner, or referee, the following fees: In counties of the first class, one dollar and fifty cents per day; second class, two dollars per day; third class, two dollars per day; fourth class, two dollars and fifty cents per day; fifth class, two dollars and fifty cents per day.

(2) For attending before a municipal court, witnesses shall receive the following fees: In counties of the first class, fifty cents per day; second class, seventy-five cents per day; third class, one dollar per day; fourth class, two dollars per day; fifth class, two dollars per day.

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(3) For attending inquest over dead body before coroner, witnesses shall receive the same fees as provided in subsection (2) of this section for witnesses attending before a municipal court, to be paid out of the county treasury.

(4) Witnesses in courts of record called to testify only to an opinion founded on special study or experience in any branch of science or to make scientific or professional examinations and state the result thereof shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required.

(5) Witness fees for attending criminal trials in any court of record, except a municipal court or the county court of the city and county of Denver, shall be paid as costs as provided in section 16-18-101, C.R.S. 1973.

13-33-103. Mileage fees of jurors and witnesses. (1) All jurors and witnesses shall receive fifteen cents per mile mileage fees, in counties of every class for each mile actually and necessarily traveled in going from his place of residence to the place named in the subpoena.

(2) No officer of the courts, in which the cause is pending and on which he is in actual attendance in his official capacity, including clerks, sheriffs, bailiffs, jurors, and police officers, shall be entitled to witnesses' fees or mileage as a witness in any criminal case.

(3) No witness before a coroner, commissioner, or referee shall be allowed fees unless such witness claims the same under oath before the adjournment of the court.

(4) No witness in any court of record shall be allowed fees unless such witness claims the same under oath, then only for the number of days such witness actually attended such court in the capacity of a witness.

(5) No witness testifying in more than one criminal case on the same day shall be entitled to receive fees as a witness for more than one day by reason thereof, nor more than one day's attendance on any day, though attending in several cases.

* * *

18-8-604. Intimidating a witness. (1) A person commits intimidating a witness if, by use of a threat or act of harm or injury to any person or property directed to or committed upon a witness or to a person he believes has been or is to be called as a witness in any official proceeding, he intentionally attempts to or does:

- (a) Influence him to testify falsely or unlawfully withhold any testimony; or
 - (b) Induce him to avoid legal process summoning him to testify; or
 - (c) Induce him to absent himself from an official proceeding to which he has been legally summoned; or
 - (d) Inflict such harm or injury as retribution for such testimony or expected testimony.
- (2) Intimidating a witness is a class 4 felony.

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18-8-605. Tampering with a witness. (1) A person commits tampering with a witness if he intentionally attempts without bribery or threats to induce a witness or a person he believes is to be called as a witness in any official proceeding to:

- (a) Testify falsely or unlawfully withhold any testimony; or
 - (b) Absent himself from any official proceeding to which he has been legally summoned; or
 - (c) Avoid legal process summoning him to testify.
- (2) Tampering with a witness is a class 4 felony.

* * *

16-11-102. Presentence or probation investigation. (1) Following the return of a verdict of guilty of a felony, other than a class 1 felony, or a finding of guilt on such charge where the issues were tried to the court, or on a plea of guilty or nolo contendere to such a charge, or upon order of the court in any misdemeanor conviction, the probation officer shall make an investigation and written report to the court before the imposition of sentence. Each presentence report shall include, but not be limited to, information as to the defendant's family background, educational history, employment record, and past criminal record, an evaluation of the alternative dispositions available for the defendant, the information required by the court pursuant to section 16-11-204.5, and such other information as the court may require. In addition, the court, in cases that it deems appropriate, may require the presentence report to include the findings and results of a professionally conducted psychiatric examination of the defendant. Within a reasonable time prior to sentencing, copies of the presentence report, including any recommendations as to probation, shall be furnished to the prosecuting attorney and defense counsel or to the defendant if he is unrepresented. A copy of the presentence report shall be transmitted to the department of corrections together with the mittimus.

(4) The court, with the concurrence of the defendant and the prosecuting attorney, may dispense with the presentence examination and report; except that a report containing the information required by the court pursuant to section 16-11-204.5 shall be made in every case, and the amount of restitution shall be fixed by the court at the time of sentencing and shall be endorsed upon the mittimus.

* * *

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18-4-405. Rights in stolen property. All property obtained by theft, robbery, or burglary shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property. The owner may maintain an action not only against the taker thereof but also against any person in whose possession he finds the property. In any such action, the owner may recover three times the amount of the actual damages sustained by him, if any, and may also recover costs of the action and reasonable attorney's fees; but treble damages and attorney's fees shall not be recoverable from a good-faith purchaser or good-faith holder of the property.

* * *

16-11-309. Mandatory sentences for violent crimes. (1) (a) Except as provided in paragraph (b) of this subsection (1), any person convicted of a crime of violence shall be sentenced pursuant to section 18-1-105 (9), C.R.S. 1973, to a term of incarceration greater than the maximum in the presumptive range, but not more than twice the maximum term, provided for such offense in section 18-1-105 (1) (a), C.R.S. 1973, without suspension; except that, within ninety days after he has been placed in the custody of the department of corrections, the department shall transmit to the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case which it considers to be exceptional and to involve unusual and extenuating circumstances, may thereupon modify the sentence, effective not earlier than one hundred twenty days after his placement in the custody of the department. Such modification may include probation if the person is otherwise eligible therefor. Whenever a court finds that modification of a sentence is justified, the judge shall notify the state court administrator of his decision and shall advise said administrator of the unusual and extenuating circumstances that justified such modification. The state court administrator shall maintain a record, which shall be open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state.

(b) Any person convicted of a crime against an elderly or handicapped person in which he used, or possessed and threatened the use of, a deadly weapon shall be sentenced to at least the maximum term of incarceration in the presumptive range provided for such offense in section 18-1-105 (1) (a), C.R.S. 1973, without suspension. Thereafter, the provisions of paragraph (a) of this subsection (1) shall apply.

(2) (a) (I) "Crime of violence" means a crime in which the defendant used, or possessed and threatened the use of, a deadly weapon during the commission of any crime committed against an elderly or handicapped person or of a crime of murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape, or criminal extortion, or during the immediate flight therefrom, or who caused serious bodily injury or death to any person, other than himself or another participant, during the commission of any such felony or during the immediate flight therefrom.

(II) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant

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used threat, intimidation, or force against the victim. For purposes of this subparagraph (II), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411 (1), C.R.S. 1973, and "bodily injury" shall have the same meaning as set forth in section 18-1-901 (3) (c), C.R.S. 1973.

(III) The provisions of subparagraph (II) of this paragraph (a) shall apply only to felony unlawful sexual offenses.

(b) As used in this section, "elderly person" means a person who is sixty years of age or older. "Handicapped person" means a person who is disabled because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision in both eyes to such a degree as to constitute virtual blindness.

(3) Repealed, L. 77, p. 888, § 78, effective July 1, 1979.

(4) In any case in which the accused is charged with a crime of violence as defined in subsection (2) (a) (I) of this section, the indictment or information shall so allege in a separate count, even though the use or threatened use of such deadly weapon or infliction of such serious bodily injury or death is not an essential element of the crime charged.

(5) The jury, or the court if no jury trial is had, in any case as provided in subsection (4) of this section shall make a specific finding as to whether the accused did or did not use, or possessed and threatened to use, a deadly weapon during the commission of such crime or whether such serious bodily injury or death was caused by the accused. If the jury or court finds that the accused used, or possessed and threatened the use of, such deadly weapon or that such injury or death was caused by the accused, the penalty provisions of this section shall be applicable.

* * *

18-4-304. Robbery of the elderly or handicapped - legislative declaration.

(1) A person who commits robbery of a person of advanced age or a handicapped person is guilty of robbery of the elderly or handicapped.

(2) For the purpose of this section, "person of advanced age" means a person age sixty or older. "Handicapped person" means a person who is disabled because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision in both eyes to such a degree as to constitute virtual blindness.

(3) Robbery of the elderly or handicapped is a class 3 felony.

(4) If the offender is convicted of robbery of the elderly or handicapped, the court shall impose at least the presumptive sentence under section 18-1-105 (1). If the person of advanced age or the handicapped person robbed has sustained monetary damages, the court may order the offender to provide restitution pursuant to section 16-11-204.5 and article 28 of title 17, C.R.S. If, after a reasonable period not to exceed one hundred eighty days, the offender has not initiated restitution, the offender's probation shall be revoked.

(5) The general assembly recognizes that fear of crime is one of the major personal concerns of elderly and handicapped persons and that elderly and

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handicapped persons are more vulnerable to and disproportionately damaged by crime because they are less able to escape offenders and are more likely to receive serious injury. The elderly and handicapped are particularly impacted by crimes of robbery because they tend to suffer the greatest relative deprivation — financially, physically, and psychologically — as a result of the crimes against them. Elderly persons and the handicapped are seldom as physically or emotionally equipped to protect themselves or aid in their own security as are their younger counterparts in society. At the same time, they are far more susceptible than other age groups to the adverse long-term effects of robbery. The loss of money and material goods through strong arm robbery (by physical force) represents a substantial financial impact upon most elderly and handicapped victims. The general assembly therefore finds that the penalty for the crime of robbery against an elderly or handicapped person should be more severe than the penalty for robbery of other members of society.

Source: Added, L. 79, p. 734, § 2, 1; (4) amended, L. 80, p. 794, § 48.

Cross reference: For administrative proceeding to compensate victims of crime, see article 4.1 of title 24; for restitution to elderly victims of theft, see § 18-4-401.

Law reviews. For article, "Mens Rea and the Colorado Criminal Code", see 52 U. Colo. L. Rev. 167 (1981).

PART 4
THEFT

18-4-401. Theft. (7) (a) The general assembly recognizes that fear of crime is one of the major personal concerns of elderly persons and that elderly persons are more vulnerable to and disproportionately damaged by crime. The elderly are particularly impacted by the crime of theft because they tend to suffer the greatest relative deprivation - financially and psychologically - as a result of the crimes against them. Elderly persons are seldom as physically or emotionally equipped to protect themselves or aid in their own security as are their younger counterparts in society. At the same time, they are far more susceptible than other age groups to the adverse long-term effects of theft. The loss of money and material goods through theft represents a substantial financial impact upon most elderly victims. The general assembly therefore finds that the penalty for the crime of theft against an elderly person should be more severe than the penalty for theft of other members of society. A person commits theft from the elderly when he commits theft under subsection (1) of this section and the victim is a person who is sixty years of age or older and the defendant commits any element or portion of the offense in the presence of the victim. Theft from the elderly is a class 1 misdemeanor if the value of the thing involved is less than two hundred dollars or a class 3 felony if the value of the thing involved is two hundred dollars or more.

(b) If the person is convicted of theft from the elderly, the court may order the offender to provide restitution pursuant to section 16-11-204.5 and article 28 of title 17, C.R.S.

(8) A municipality shall have concurrent power to prohibit theft, by ordinance, where the value of the thing involved is less than two hundred dollars.

Category	Citation
1. Victim Compensation Program	54-201 et seq.
1.1 Responsible Agency	54-202(a)
1.2 Eligible Claimants	54-209, 54-211(b),(e)
1.3 Losses Covered	54-209, 54-210
1.4 Minimum and Maximum Award	54-211(c)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	54-211(a)
1.7 Filing of Claim - Time Limit	54-211(a)
1.8 Emergency Award	54-217
1.9 Funding	54-215
2. Restitution	
2.1 Sentencing Option	53a-30(a)(4)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	§18-101h(e) (restitution programs)
3. Escrow and Forfeiture of Offender Profits	54-218
4. Witness Fees	52-260(a)
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	53a-151
6.2 Protective Orders	
7. Victim Notification	P.A. No. 83-170 (1983) (notice of arraignment to family of deceased victim)
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	54-91c(e)
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	54-91a(c)
8.2 Written Statement at Sentencing Hearing	54-91c(b)

Category	Citation
8.3 Testimony at Sentencing Hearing	54-91c(b)
8.4 Written Statement at Parole Hearing	P.A. No. 83-416(b)(1983)
8.5 Testimony at Parole Hearing	P.A. No. 83-416(b)(1983)
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	54-85b
10. Return of Seized Property	54-36a et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	18-101h et seq.; 54-203(e)
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	46a-24
12.3 Abuse, Neglect, Exploitation - Reporting	46a-14 et seq.
12.4 Abuse, Neglect, Exploitation - Protective Services	46a-20 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	46b-15, 46b-38
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	54-203(b)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	P.A. No. 83-429(1983)

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Connecticut General Statutes Annotated (West)

CHAPTER 968

CRIME VICTIMS COMPENSATION

Sec. 54-201.	Definitions.	Sec. 54-206.	Attorney's fees as part of order.
54-202.	Criminal injuries compensation board established. Appointment; compensation; hearing officers; personnel.	54-207.	Regulations to prescribe procedures.
54-203.	Powers and duties of board.	54-208.	Order of compensation. Criminal intent circumstances considered. Prosecution not necessary. Amounts.
54-204.	Application for compensation or restitution services. Report and examination.	54-209.	Compensation ordered; when.
54-205.	Hearing on application.	54-210.	Compensation ordered for expenses, loss of earnings, pecuniary loss and other losses.
Sec. 54-211.	When no order of payment shall be made.	Sec. 54-214.	Annual report to legislature.
54-211a.	Appeal [New].	54-215.	Criminal injuries compensation fund established.
54-212.	Board to have subrogated cause of action against person responsible for crime.	54-216.	Restitution services.
54-213.	Award not subject to execution or attachment.	54-218.	Profits derived as result of crime of violence. Recovery of money judgment by victim. Payment to criminal injuries compensation fund [New].

§ 54-201. Definitions

As used in this chapter:

- (1) "Victim" means a person who is injured or killed as provided in section 54-209;
- (2) "Personal injury" means actual bodily harm and mental anguish which is the direct result of bodily injury and includes pregnancy and any condition thereof;
- (3) "Dependents" means such relatives of a deceased victim as were wholly or partially dependent upon his income at the time of his death and shall include the child of such victim born after his death;
- (4) "Relative of any person" means the spouse, parent, grandparent, stepparent, child, including natural born, step and adopted, grandchild, brother, sister, half brother, half sister or spouse's parents.

(1978, P.A. 78-261, § 1, eff. July 1, 1978.)

Effective Date

1978, P.A. 78-261, § 17, provided:

"This act shall take effect January 1, 1979, except section 1, subsection (a) of section 2, sections 15 and 16 shall take effect July 1, 1978."

Library References

Words and Phrases (Perm.Ed.)

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§ 54-202. Criminal injuries compensation board established. Appointment; compensation; hearing officers; personnel

(a) There is established a criminal injuries compensation board, hereinafter referred to as "the board," to consist of three members to be appointed by the governor. The governor shall designate one of the members as chairperson. One member of the board shall be an attorney-at-law admitted to practice in this state for at least five years. One member shall be a medical or osteopathic physician licensed to practice in this state and one member shall be an elector who is neither an attorney-at-law nor a physician licensed to practice in this state and who has never been a victim or relative of any person who has been a victim, as defined by section 54-201. The board shall not be construed to be a board or commission within the meaning of subsection (b) of section 4-9a. The board shall be within the office of policy and management for administrative purposes only.

(b) Each member of the board shall be eligible for reappointment and any member of the board may be removed by the governor for inefficiency, neglect of duty or malfeasance in office after due notice and hearing.

(c) Each member of the board shall be paid [fifty] ONE HUNDRED dollars for each day during which he is engaged in the duties of said board.

CRIMINAL PROCEDURE

§ 54-204

any proceeding conducted pursuant to this chapter, but final determinations of any matter shall be made only by the board. A hearing officer acting pursuant to this subsection shall report his findings of fact and conclusions of law to the board together with his reasons therefor. The board shall act only after consideration of the report and upon such other evidence as it deems appropriate.

(e) Subject to the provisions of chapter 67, the board may appoint and fix the duties of such personnel as are necessary for carrying out its functions under this chapter.

(1978, P.A. 78-261, § 2, eff. July 1, 1978; 1980, P.A. 80-390, § 1, eff. July 1, 1980.)

1980 Amendment

1980, P.A. 80-390, § 1, rewrote subsec. (c) which formerly read "Members of the board shall receive no compensation for their duties as such but shall be reimbursed for their necessary ex-

penses in the performance of their duties as such in accordance with section 4-1".

1980, P.A. 80-390, § 5, provided:
"This act shall take effect July 1, 1980."

Cross References

"Administrative purposes only", see § 4-38f.

Section 54-203 of the general statutes is repealed and the following is substituted in lieu thereof:

The board shall have the following powers and duties:

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(a) To direct each hospital, whether public or private, to display prominently in its emergency room posters giving notice of the availability of compensation to victims of crime or their dependents pursuant to this chapter, and to direct every law enforcement agency of the state to inform victims of crime or their dependents of their rights pursuant to this chapter.

(b) To request from the office of the state's attorney, state police, local police departments or any law enforcement agency such investigation and data as will enable the board to determine if in fact the applicant was a victim of a crime or attempted crime and the extent, if any, to which the victim or claimant was responsible for his own injury.

(c) To direct medical examination of victims as a requirement for payment under this chapter.

(d) To take or cause to be taken affidavits or depositions within or without the state.

(e) To APPLY FOR, RECEIVE, ALLOCATE, DISBURSE AND ACCOUNT FOR GRANTS OF FUNDS MADE AVAILABLE BY THE UNITED STATES, BY THE STATE, FOUNDATIONS, CORPORATIONS AND OTHER BUSINESSES, AGENCIES OR INDIVIDUALS TO implement [such programs to] A PROGRAM FOR VICTIM SERVICES WHICH SHALL assist witnesses and victims of crimes as the board deems appropriate within the resources available.

§ 54-204. Application for compensation or restitution services. Report and examination

(a) Any person who may be eligible for compensation or restitution services, or both, pursuant to this chapter may make application therefor to the board. If the person entitled to make application is a minor or incompetent person, the application may be made on his behalf by his parent, guardian or other legal representative.

(b) In order to be eligible for compensation or restitution services under this chapter, the applicant shall prior to a hearing on any application made pursuant to this chapter submit reports if reasonably available from all physicians or surgeons who have treated or examined the victim in relation to the injury for which compensation is claimed at the time

of or subsequent to the victim's injury or death. If in the opinion of the board or the hearing examiner reports on the previous medical history of the victim, examination of the injured victim and a report thereon or a report on the cause of death of the victim by an impartial medical expert would be of material aid to its just determination, the board shall order such reports and examinations.

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§ 54-205. Hearing on application . .

(a) Upon application made under the provisions of this chapter, the board shall fix a time and place for a hearing and shall give notice thereof to the applicant.

(b) For the purposes of carrying out the provisions of this chapter, the board or its hearing officer may hold such hearings, sit and act at such times and places and take such testimony as it or he may deem advisable. The board or its hearing officer may administer oaths or affirmations to witnesses. The board shall have full power to subpoena any witness to appear and give testimony or to issue a subpoena duces tecum, provided no subpoena shall be issued except under the signature of a member of the board, and application to any court for aid in enforcing such subpoena may be made in the name of the board only by a member thereof. Subpoenas shall be served by any person designated by the board.

(c) The applicant 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. The board or its hearing officer also may hear such other persons as in its or his judgment may have relevant evidence to submit.

(d) Any statement, document, information or matter may be received in evidence if in the opinion of the board or its hearing officer it contributes to a determination of the claim, whether or not the same would be admissible in a court of law.

(e) If any person has been convicted of any offense with respect to an act on which a claim under this chapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed by such person, unless an appeal or any proceeding with regard thereto is pending.

(f) Orders and decisions of the board shall be final.

(1978, P.A. 78-261, § 5, eff. Jan. 1, 1979.)

§ 54-206. Attorney's fees as part of order

The board may as part of any order entered under this chapter determine and allow reasonable attorney's fees, which shall not exceed fifteen per cent of the amount awarded as compensation under section 54-203, to be paid out of but not in addition to the amount of such compensation. No such attorney shall ask for, contract for or receive any larger sum than the amount so allowed.

§ 54-207. Regulations to prescribe procedures

In the performance of its functions the board may adopt regulations, in accordance with chapter 54 prescribing the procedures to be followed in the filing of applications and proceedings under this chapter, and insofar as practicable, formulating standards for uniform application of this chapter taking into consideration rates and amounts of compensation payable for injuries and death under other laws of this state and of the United States and any funds available for purposes of this chapter.

§ 54-208. Order of compensation. Criminal intent circumstances considered. Prosecution not necessary. Amounts

(a) If a person is injured or killed as provided in section 54-209, the board may order the payment of compensation in accordance with the provisions of this chapter: (1) To or for the benefit of the injured person; (2) in the case of personal injury of the victim, to any person responsible for the maintenance of the victim who has suffered pecuniary loss as a result of such injury, or (3) in the case of death of the victim, to or for the benefit of any one or more of the dependents of the victim, or to any person who has suffered pecuniary loss, including but not limited to funeral expenses, as a result of such death.

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(b) For the purposes of this chapter, a person shall be deemed to have intended an act notwithstanding that, by reason of age, insanity, drunkenness or otherwise, he was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the board shall consider all circumstances determined to be relevant, including but not limited to provocation, consent or any other behavior of the victim which directly or indirectly contributed to his injury or death, need for financial aid, the extent of the victim's cooperation with the board investigating his or her application and with law enforcement agencies in their efforts to apprehend and prosecute the offender and any other relevant matters.

(d) An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such act. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under this chapter for such period as it deems appropriate on the ground that a prosecution for an offense arising out of such act or omission has been commenced or is imminent.

(e) In determining the amount of compensation to be allowed the board shall take into consideration amounts that the applicant has received or is eligible to receive from any other source or sources, including but not limited to payments from state and municipal agencies, insurance benefits, and workers' compensation awards, as a result of the incident or offense giving rise to the application.

(f) Payments shall be in a manner to be determined by the board, including but not limited to lump sum or periodic payments, annuities and deposits in accounts held in trust for the benefit of the applicant.

§ 54-209. Compensation ordered, when

The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death which resulted from: (1) An attempt to prevent the commission of crime or to apprehend a suspected criminal or in aiding or attempting to aid a police officer so to do, or (2) the commission or attempt to commit by another any crime as provided in section 53a-24, provided no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purposes of this chapter unless the injuries were intentionally inflicted through the use of the vehicle.

§ 54-210. Compensation ordered for expenses, loss of earnings, pecuniary loss and other losses

The board may order the payment of compensation under this chapter for: (1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim; (2) loss of earning power as a result of total or partial incapacity of such victim; (3) pecuniary loss to the dependents of the deceased victim, and (4) any other loss resulting from the personal injury or death of the victim which the board determines to be reasonable. There shall be one hundred dollars deductible from the total amount determined by said board.

§ 54-211. When no order of payment shall be made

(a) No order for the payment of compensation shall be made under section 54-210 unless the application has been made within two years after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense listed in section 54-209 which has been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within five days of the time when a report could reasonably have been made.

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(b) No compensation shall be awarded if: (1) The offender benefits from the award; (2) the victim was at the time of the personal injury or death of the victim living with the offender by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship; (3) the victim violated a penal law of this state, which violation caused or contributed to his injuries or death.

(c) No compensation shall be awarded for the first hundred dollars of injury sustained and no such compensation shall be in an amount in excess of ten thousand dollars.

(d) Orders for payment of compensation pursuant to this chapter may be made only as to injuries or death resulting from incidents or offenses arising on and after January 1, 1979.

CRIMINAL PROCEDURE

(e) No compensation shall be awarded pursuant to this chapter if the victim, at the time of the personal injury or death of the victim, was not a resident of this state, unless a law substantially similar to the provisions of this chapter has been enacted in the state in which such victim was a resident at the time of the personal injury or death of the victim.

§ 54-211a. Appeal

Any applicant aggrieved by an order or decision of the board may appeal to the superior court of the judicial district of Hartford-New Britain.

(1982, P.A. 82-397, § 3, eff. June 7, 1982.)

§ 54-212. Board to have subrogated cause of action against person responsible for crime

Whenever an order for the payment of compensation for personal injury or death or for the provision of restitution services is or has been made under this chapter, the board shall, upon payment of the amount of the order or the provision of such services, be subrogated to the cause of action of the applicant against the person or persons responsible for such injury or death and shall be entitled to bring an action against such person or persons and to recover, whether by judgment, settlement or compromise settlement before or after judgment, the amount of damages sustained by the applicant. The board may contract with private attorneys to undertake subrogation actions on its behalf.

§ 54-213. Award not subject to execution or attachment

No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

(1978, P.A. 78-261, § 13, eff. Jan. 1, 1979.)

§ 54-214. Annual report to legislature

The board shall submit to the legislature annually on or before February fifteenth a report of its activities under this chapter including the applicant's identification number and a brief description of the facts in each case, the town of residence of the applicant, and the amount of any compensation awarded.

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§ 54-215. Criminal injuries compensation fund established

Text of section effective until July 1, 1983.

The board shall establish a criminal injuries compensation fund for the purpose of funding the compensation and restitution services provided for by this chapter. The cost paid into court under section 54-143 shall be credited to and become a part of said criminal injuries compensation fund. If payment is awarded under section 54-210 and thereafter the court orders the defendant in the criminal case from which such injury or death resulted to make restitution, any money collected as restitution shall be paid to said fund unless the court directs otherwise. Any administrative costs related to the operation of said fund, including credits to and payments of compensation therefrom, and the cost of providing any services offered by the board to witnesses and victims of crime, shall be paid from said fund. The board may also apply for and receive moneys for said fund from any federal or private source.

(1978, P.A. 78-261, § 16, eff. July 1, 1978; 1979, P.A. 79-505, § 2; 1980, P.A. 80-390, § 3, eff. July 1, 1980.)

For text of section effective July 1, 1983, see § 54-215, post.

§ 54-215. Criminal injuries compensation fund established.

Text of section effective July 1, 1983

The board shall establish a criminal injuries compensation fund for the purpose of funding the compensation and restitution services provided for by this chapter. The cost paid into court under section 54-143 shall be credited to and become a part of said criminal injuries compensation fund. If payment is awarded under section 54-210 and thereafter the court orders the defendant in the criminal case from which such injury or death resulted to make restitution, any money collected as restitution shall be paid to said fund unless the court directs otherwise. Any administrative costs related to the operation of said fund, including credits to and payments of compensation therefrom, the cost of encouraging volunteer activities on the board's behalf, and the cost of providing any services offered by the board to witnesses and victims of crime, shall be paid from said fund. The board may also apply for and receive moneys for said fund from any federal or private source. The board shall invest the excess cash balance of said fund in the short term investment fund administered by the state treasurer pursuant to section 3-27a. Any interest earned from such investment shall be deposited in the criminal injuries compensation fund.

§ 54-216. Restitution services

(a) The board may order that services be provided for the restitution of any person eligible for such services in accordance with the provisions of this chapter. Such services may include but shall not be limited to medical, psychiatric, psychological and social services and social rehabilitation services.

(b) The board may contract with any public or private agency for any services ordered under subsection (a) of this section.

§ 54-217. Emergency award pending final decision on claim

Notwithstanding the provisions of section 54-204 and section 54-205, if it appears to the board prior to taking action upon such claim, that (a) such claim is one with respect to which an award probably will be made, and (b) undue hardship will result to the claimant if immediate payment is not made, the board may make an emergency award to the claimant pending a final decision in the case, provided (1) the amount of such emergency award shall not exceed five hundred dollars, (2) the amount of such emergency award shall be deducted from any final award made to the claimant and (3) the excess of the amount of such emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the board.

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§ 54-218. Profits derived as result of crime of violence. Recovery of money judgment by victim. Payment to criminal injuries compensation fund

(a) Any person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person accused of a crime of violence in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the clerk of the court of the judicial district in which the crime is alleged to have been committed any moneys which would otherwise, by terms of such contract, be owing to the persons so convicted or his representatives. The clerk of the court shall deposit such moneys in an interest bearing escrow account for the benefit of and payable to such accused person for the expenses of his or her defense and any victim of a crime of violence committed by such person, provided such person is eventually convicted of the crime and, provided further such victim, within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives. Any covenant, promise, agreement or understanding entered into or in connection with or collateral to a contract or agreement relative to the payment of any person accused or convicted of a crime of violence which attempts to circumvent the provisions of this section is prohibited.

(b) If no victim brings a civil action and recovers a money judgment within five years of the date of the crime, the moneys in any such escrow account shall be paid to the criminal injuries compensation fund established under section 54-215.

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§ 53a-30. Conditions of probation and conditional discharge

(a) When imposing sentence of probation or conditional discharge, the court may, as a condition of the sentence, order that the defendant: (1) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment; (2) undergo medical or psychiatric treatment and remain in a specified institution, when required for that purpose; (3) support his dependents and meet other family obligations; (4) make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance; (5) if a minor, (A) reside with his parents or in a suitable foster home, (B) attend school, and (C) contribute to his own support in any home or foster home; (6) post a bond or other security for the performance of any or all conditions imposed; (7) refrain from violating any criminal law of the United States, this state or any other state; (8) reside in a residential community center or halfway house approved by the commissioner of correction, and contribute to the cost incident to such residence; (9) satisfy any other conditions reasonably related to his rehabilitation. The court shall cause a copy of any such order to be delivered to the defendant and to the probation officer, if any.

* * *

§ 52-260. Witness fees

(a) The fees of a witness for attendance before any court, the general assembly or any committee thereof, when summoned by the state, or before any legal authority, shall be fifty cents a day, and for travel to the place of trial, ten cents a mile. Whenever a garnishee is required to appear before any court, he shall receive the same fees as a witness in a civil action and be paid in the same manner. A witness in a criminal trial shall receive for travel at said rate for one day only, and for each day thereafter for travel in such case shall be paid only his actual traveling expenses, not exceeding ten cents a mile. The clerk of the superior court, upon request, shall, on the day of attendance, pay the fee of any witness summoned by the state to appear before the court. In criminal trials, no fees may be allowed to bystanders called as witnesses.

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§ 53a-150

PENAL CODE

Title 53a

Library References

Bribery § 1.

C.J.S. Bribery § 1 et seq.

§ 53a-151. Tampering with a witness: Class D felony

(a) A person is guilty of tampering with a witness if, believing that an official proceeding is pending or about to be instituted, he induces or attempts to induce a witness to testify falsely, withhold testimony, elude legal process summoning him to testify or absent himself from any official proceeding.

(b) Tampering with a witness is a class D felony.

(1969, P.A. 828, § 153, eff. Oct. 1, 1971.)

CRIMES AND OFFENSES—COURT PROCEEDINGS —NOTIFICATION TO FAMILIES OF CERTAIN VICTIMS

AN ACT REQUIRING NOTIFICATION TO FAMILIES OF CERTAIN VICTIMS CONCERNING COURT PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) In any case in which a person has committed an offense, including any motor vehicle violation, which results in the death of another person, the state's attorney shall identify and notify a member of the immediate family of the victim or the next of kin of the victim, if any, of the arraignment of the person accused of the offense or violation. Such state's attorney shall provide information on the date, time and place of the arraignment and shall furnish the designated family member or next of kin with the name and telephone number of a person to contact for additional information or for information on the status of the case.

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(c) Whenever an investigation is required, the probation officer shall promptly inquire into the circumstances of the offense, the attitude of the complainant or victim, or of the immediate family where possible in cases of homicide, and the criminal record, social history and present condition of the defendant. All local and state police agencies shall furnish to the probation officer and restitution specialist such criminal records as the probation officer and restitution specialist may request. When in the opinion of the court or the investigating authority it is desirable, such investigation shall include a physical and mental examination of the defendant. If the defendant is committed to any institution, the investigating agency shall send the reports of such investigation to the institution at the time of commitment.

CRIMINAL PROCEDURE

§ 54-91c. Testimony of crime victim at sentencing hearing.

(a) For the purposes of this section, "victim" means a person who is a victim of a class A, B or C felony, the legal representative of such person or a member of a deceased victim's immediate family.

(b) Prior to the imposition of sentence upon any defendant who has been found guilty of a class A, B or C felony or has pleaded guilty or nolo contendere to any class A, B or C felony, the court shall permit the victim of the crime to appear before the court for the purpose of making a statement for the record. In lieu of such appearance, the victim may submit a written statement to the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case. Such state's attorney, assistant state's attorney or deputy assistant state's attorney shall file the statement with the sentencing court and the statement shall be made a part of the record at the sentencing hearing. Any such statement, whether oral or written, shall relate solely to the facts of the case and the extent of any injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced. After consideration of any such statements, the court may refuse to accept, where appropriate, a negotiated plea or sentence, and the court shall give the defendant an opportunity to enter a new plea and to elect trial by jury or by the court.

(c) Prior to the imposition of sentence upon such defendant, the state's attorney, assistant state's attorney or deputy assistant state's attorney in charge of the case shall advise the victim of such crime of the date, time and place of the original sentencing hearing, provided the victim has informed such state's attorney, assistant state's attorney or deputy assistant state's attorney that he or she wishes to make or submit a statement as provided in subsection (b) of this section and has complied with a request from such state's attorney, assistant state's attorney or deputy assistant state's attorney to submit a stamped, self-addressed postcard for the purpose of such notification.

(d) The provisions of this section shall not apply to any proceedings held in accordance with section 46b-121 or section 54-76h.

(1981, P.A. 81-324, §§ 1 to 3, eff. July 1, 1981.)

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§ 54-85b. Employer not to discharge employee appearing as witness. Penalty. Action for damages and reinstatement

(a) An employer shall not deprive an employee of his employment, penalize or threaten or otherwise coerce him with respect thereto, because the employee obeys a legal subpoena to appear before any court of this state as a witness in any criminal proceeding. Any employer who violates this section shall be guilty of criminal contempt and shall be fined not more than five hundred dollars or imprisoned not more than thirty days or both.

(b) If an employer discharges, penalizes or threatens or otherwise coerces an employee in violation of subsection (a) of this section, the employee, within ninety days of such action, may bring a civil action for damages and for an order requiring his reinstatement or otherwise rescinding such action. If the employee prevails, he shall be allowed a reasonable-attorney's fee to be fixed by the court.

* * *

§ 54-36a. "Contraband", "stolen property", "owner" defined; seized property; inventory filed with clerk, court orders re, return of compliance, criminal contempt

(a) As used in this section, sections 53-278c and 54-36c: (1) "Contraband" means any property, the possession of which is prohibited by any provision of the general statutes; (2) "stolen property" shall include, but not be limited to, cash or the proceeds from the sale of such property obtained by theft or other illegal means; (3) "owner" means a person or persons entitled to seized property as a matter of law or fact.

(b) Whenever property is seized in connection with a criminal arrest or seized pursuant to a search warrant without an arrest, the law enforcement agency seizing such property shall file, on forms provided for this purpose by the executive secretary of the judicial department, an inventory of the property seized. The inventory, together with the uniform arrest report, in the case of an arrest, shall be filed with the clerk of the court for the judicial district or geographical area in which the criminal offense is alleged to have been committed; except, when the property is stolen property and, in the opinion of the law enforcement officer, does not exceed fifty dollars in value, the filing of an inventory shall not be required and such property may be returned to the owner. In the case of the property seized in connection with a search warrant without an arrest, the inventory shall be attached to the warrant and shall be filed with the clerk of the court for the judicial district or geographical area in which the search warrant was issued. If the seized property is stolen property, within forty-eight hours of the seizure, the law enforcement agency seizing the property shall notify the owner of the property if known, or, if the owner of the property is unknown at the time of seizure, such agency shall within forty-eight hours of any subsequent ascertainment of the owner notify such owner, and, on a form prescribed by the executive secretary of the judicial department, advise the owner of his rights concerning the property and the location of the property. Such written notice shall include a request form for the return of the property. The owner may request the return of the property by filing such request form with such law enforcement agency, and upon receipt of such request, the law enforcement agency shall forward it to the clerk of the court for the judicial district or geographical area in which the criminal offense is alleged to have been committed. The clerk of the court shall notify the defendant or

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CRIMINAL PROCEDURE—PAROLE HEARINGS—
VICTIMS TO TESTIFY

Substitute House Bill No. 5281

PUBLIC ACT NO. 83-416

AN ACT PERMITTING CRIME VICTIMS TO TESTIFY AT
PAROLE HEARINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) For the purposes of this section, "victim" includes the legal representative of the victim or a member of the deceased victim's immediate family.

(b) At a hearing held by a panel of the board of parole for the purpose of determining the eligibility for parole of an inmate incarcerated for the commission of a class A, B or C felony or for a violation of section 53a-60a, 53a-60c, 53a-72b, 53a-103a or 53a-216 of the general statutes, such panel shall permit any victim of the crime for which the inmate is incarcerated to appear before the panel for the purpose of making a statement for the record concerning whether the inmate should be released on parole or the nature of any terms or conditions to be imposed upon any such release. In lieu of such appearance, the victim may submit a written statement to the panel and the panel shall make such statement a part of the record at the parole hearing.

(c) Nothing in this section shall be construed to require the state to give notice to a victim of a scheduled parole hearing.

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defendants of the request to return the property. The court shall order the return of the property within thirty days of the date of filing such return request by the owner, except that for good cause shown, the court may order retention of the property for a period to be determined by the court. Any secondary evidence of the identity, description or value of such property shall be admissible in evidence against such defendant in the trial of such case. The fact that the evidence is secondary in nature may be shown to affect the weight of such evidence, but not to affect its admissibility. If any criminal proceeding is transferred to another court, then the clerk of the court with which the inventory is filed shall transfer such inventory to the clerk of the court to which such action is transferred.

(c) Unless such seized property is adjudicated a nuisance in accordance with section 54-33g, or unless the court finds that such property shall be forfeited or is contraband or a controlled substance as defined in subdivision (9) of section 19-443, it shall, at the final disposition of the criminal action or as soon thereafter as is practical, or, if there is no criminal action, at any time upon motion of the prosecuting official of such court, order the return of such property to its owner in accordance with subsection (b) of this section.

(d) Any order made under the provisions of subsection (c) of this section or section 54-33f or 54-33g, shall upon notification from the clerk, be complied with by the person or department having custody or possession of such property.

(e) A return of compliance with the court order, on a form prescribed by the executive secretary of the judicial department, shall be filed with the clerk of the court by the person or department, to whom notice is sent in accordance with the provisions of subsection (d) of this section. The return of compliance shall be filed with the clerk forthwith. Failure to file the return of compliance or to comply with the court order shall constitute criminal contempt. Anyone convicted of criminal contempt may be punished by a fine of not more than one hundred dollars and imprisoned for not more than four days, or both.

(f) If a return of compliance with a court order states that the seized property was not claimed by the owner within six months, the clerk shall notify the court and the court shall order that such property be destroyed or given to a charitable or educational institution or to a governmental agency or institution, provided, if such property is money or valuable prize, it shall become the property of the state. The court may also order that such property be sold by sale at public auction, in which case the proceeds shall become the property of the state. The clerk shall notify the custodian of such property of the court order and he shall comply with the court order and file a return of compliance.

* * *

PART II. COMMUNITY CORRECTION SERVICES

§ 18-101h. Definitions

As used in this part:

- (a) "Department" means the department of correction.
- (b) "Commissioner" means the commissioner of correction.

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(c) "Community-based service programs" means residential or nonresidential programs provided by private, nonprofit community or locally based organizations, state agencies or units of local government including the public-private resource expansion project, which offer housing, transportation, employment and counseling services to incarcerated, paroled or discharged offenders, victims of crime, persons charged with a crime, persons diverted from the criminal process and families of offenders.

(d) "Residential programs" means those offered in "halfway houses," providing twenty-four hour care, supervision, and supportive services to pretrial, incarcerated, paroled or discharged offenders.

(e) "Nonresidential programs" means those programs providing daytime or episodic community correction services to pretrial, incarcerated, paroled or discharged offenders and their families, or victims of crime and programs involving restitution or community service to pretrial offenders. For the purposes of this subsection, "community service" means the placement of offenders in unpaid positions with nonprofit or tax-supported agencies for the performance of a specified number of hours of work or service within a given period of time, and "restitution" means the restoration by an offender of a victim's losses through either payment of money or provision of services to the victim or, with the concurrence of the victim, to a third party.

§ 18-101i. Community-based service programs established

(a) To establish and develop noninstitutional, community-based service programs, the commissioner shall award grants or purchase of service contracts in accordance with the plan developed under subsection (b) to private, nonprofit organizations, state agencies or units of local government; provided such grants shall not be subject to the formula funding requirements of section 18-101k. Such grants or contracts shall be the predominant method by which the department develops, implements and operates community correction programs. In addition, the commissioner may administer community-based service programs under the direct control of the department.

(b) To carry out the purposes of subsection (a) the commissioner shall:

(1) Develop and revise annually a comprehensive state community correction plan for the delivery of services in each of the service areas established by section 18-101j. The department shall adopt regulations in accordance with chapter 54 by January 1, 1981, providing for community input into such plan.

(2) Report annually to the governor and the general assembly regarding its community correction activities. At a minimum such report shall include the number of clients served, services offered and prevailing concerns of the service areas.

(3) Research and gather relevant statistical data concerning the impact of community correction services and make such data available to the service areas and community correction program providers on a monthly and annual basis.

(4) Establish a mechanism to monitor and evaluate on a regular basis all community correction programs and report their findings in writing to each agency in a timely and regular manner.

(5) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services or property from the federal government, in accordance with the state community correction plan.

(c) The department shall include in its budget a separate allocation for the provision of community-based service programs as required by this part.

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§ 18-101j. Community correction service areas established

There shall be five community correction service areas corresponding to the health systems agency regions established pursuant to the National Health Planning Resources and Development Act, Public Law 93-641. These areas shall be used by the department in the data collection concerning community correction programs and the planning, delivery and evaluation of community correction programs and for the purpose of providing funds under purchase of service contracts for community correction programs of the department.

(1980, P.A. 80-200, § 4, eff. July 1, 1980.)

§ 18-101k. Funding

(a) In establishing the level of funds in each service area, and funds available for each service contract, the department shall in accordance with chapter 54 adopt regulations by February 1, 1981, providing a formula and procedures for the application, review and award or denial of requests for funds, and providing for the waiver or amendment of such formula as provided in subsection (c).

(b) Such formula shall provide for: (1) Private sector match; (2) client population ratio; (3) nonclient criteria; (4) residential facility criteria; and (5) nonresidential facility criteria.

(c) Such formula may be amended or waived by the department when, after due consideration, it finds that services for such area are not needed or that such area fails to have existing private, nonprofit organizations or units of local government to carry out the purposes of this part.

* * *

CHAPTER 814

PROTECTION OF THE ELDERLY

Sec.		Sec.	
46a-14.	Definitions.	46a-19.	Lack of consent or withdrawal of consent. Reports to and comments by ombudsman.
46a-15.	Report of suspected abuse, neglect, exploitation, abandonment or need for protective services. Penalty for failure to report. Immunity for report or testimony.	46a-20.	Appointment of conservator for elderly person lacking capacity to consent to protective services.
46a-16.	Evaluation of report. Findings and recommendation. Registry. Confidentiality.	46a-21.	Assistance by public or private agencies.
46a-17.	Referral to department of human resources. Injunction against interference by caretaker.	46a-22.	Periodic review of cases in which protective services are provided. Consent to continuation of services.
46a-18.	Access to records. Authority of departments of human resources and aging.	46a-23.	Payment for protective services. Procedures when elderly person unable to pay.
		46a-24.	Referral for criminal investigation or proceedings.
		46a-25.	Regulations.
		46a-26.	Repealed.

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For purposes of this chapter:

(1) The term "elderly person" means any resident of Connecticut who is sixty years of age or older.

(2) An elderly person shall be deemed to be "in need of protective services" if such person is unable to perform or obtain services which are necessary to maintain physical and mental health.

(3) The term "services which are necessary to maintain physical and mental health" includes, but is not limited to, the provision of medical care for physical and mental health needs, the relocation of an elderly person to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment, and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent except as provided in this chapter.

(4) The term "protective services" means services provided by the state or other governmental or private organizations or individuals which are necessary to prevent abuse, neglect, exploitation or abandonment. Abuse includes, but is not limited to, the wilful infliction of physical pain, injury or mental anguish, or the wilful deprivation by a caretaker of services which are necessary to maintain physical and mental health. Neglect refers to an elderly person who is either living alone and not able to provide for oneself the services which are necessary to maintain physical and mental health or is not receiving the said necessary services from the responsible caretaker. Exploitation refers to the act or process of taking advantage of an elderly person by another person or caretaker whether for monetary, personal or other benefit, gain or profit. Abandonment refers to the desertion or wilful forsaking of an elderly person by a caretaker or the foregoing of duties or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(5) The term "caretaker" means a person who has the responsibility for the care of an elderly person as a result of family relationship or who has assumed the responsibility for the care of the elderly voluntarily, by contract or by order of a court of competent jurisdiction.

(6) "State ombudsman" and "regional ombudsmen" mean the persons appointed by the commissioner on aging under the provisions of section 17-135a.

(1977, P.A. 77-613, § 1, eff. Jan. 1, 1978.)

§ 46a-15. Report of suspected abuse, neglect, exploitation, abandonment or need for protective services. Penalty for failure to report. Immunity for report or testimony

(a) Any physician or surgeon registered under the provisions of chapter 370 or 371, any resident physician or intern in any hospital in this state, whether or not so registered, any registered nurse, any nursing home administrator, nurse's aide or orderly in a nursing home facility, any person paid for caring for a patient in a nursing home facility, any staff person employed by a nursing home facility, any patients' advocate and any licensed practical nurse, medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, social worker, clergyman, police officer, pharmacist or physical therapist, who has reasonable cause to suspect or believe that any elderly person has been abused, neglected,

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exploited or abandoned, or is in a condition which is the result of such abuse, neglect, exploitation or abandonment, or who is in need of protective services, shall within five calendar days report such information or cause a report to be made in any reasonable manner to the commissioner on aging or to the person or persons designated by him to receive such reports. Any person required to report under the provision of this section who fails to make such report shall be fined not more than five hundred dollars.

(b) Such report shall contain the name and address of the involved elderly person, information regarding the nature and extent of the abuse, neglect, exploitation or abandonment, and any other information which the reporter believes might be helpful in an investigation of the case and the protection of such elderly person.

(c) Any other person having reasonable cause to believe that an elderly person is being, or has been, abused, neglected, exploited or abandoned, or who is in need of protective services may report such information in any reasonable manner to the commissioner or his designee.

(d) Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report shall be immune from any civil or criminal liability on account of such report or testimony, except for liability for perjury, unless such person acted in bad faith or with malicious purpose.

(e) For the purposes of sections 46a-14 to 46a-26, inclusive, the treatment of any elderly person by a Christian Science practitioner, in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute grounds for the implementation of protective services.

§ 46a-16. Evaluation of report. Findings and recommendation. Registry. Confidentiality

(a) The commissioner upon receiving a report that an elderly person allegedly is being, or has been, abused, neglected, exploited or abandoned, or is in need of protective services shall cause a prompt and thorough evaluation to be made, through the appropriate regional ombudsman, to determine the situation relative to the condition of the elderly person and what action and services, if any, are required. The evaluation shall include a visit to the named elderly person and consultation with those individuals having knowledge of the facts of the particular case. Upon completion of the evaluation of each case, written findings shall be prepared which shall include recommended action and a determination of whether protective services are needed. The person filing the report shall be notified of the findings, upon request.

(b) Each regional ombudsman shall maintain a registry of the reports received, the evaluation and findings and the actions recommended, and shall furnish copies of such data to the department on aging for a statewide registry.

(c) Neither the original report nor the evaluation report of the regional ombudsman shall be deemed a public record or be subject to the provisions of section 1-19. The name of the person making the original report or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests such disclosure or unless a judicial proceeding results therefrom.

§ 46a-17. Referral to department of human resources. Injunction against interference by caretaker

(a) If it is determined that an elderly person is in need of protective services, the regional ombudsman shall refer the case to the department of human resources for the provision of necessary services, provided the elderly person consents. If the elderly person fails to consent and the regional ombudsman has reason to believe that such elderly person lacks capacity to consent, the regional ombudsman shall refer the case to the department of human resources for a determination pursuant to section 46a-20 of whether a petition for appointment of a conservator should be filed.

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(b) If the caretaker of an elderly person who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such elderly person, the commissioner of human resources may petition the superior court or the probate court for an order enjoining the caretaker from interfering with the provision of protective services to the elderly person. The petition shall allege specific facts sufficient to show that the elderly person is in need of protective services and consents to their provision and that the caretaker refuses to allow the provision of such services. If the judge finds that the elderly person is in need of such services and has been prevented by the caretaker from receiving the same, the judge may issue an order enjoining the caretaker from interfering with the provision of protective services to the elderly person.

§ 46a-18. Access to records. Authority of departments of human resources and aging

Any person, department, agency or commission authorized to carry out the duties enumerated in this chapter shall have access to all relevant records, except that records which are confidential to an elderly person shall only be divulged with the written consent of the elderly person or his representative. The authority of the department of human resources, and the department on aging under this chapter shall include, but not be limited to, the right to initiate or otherwise take those actions necessary to assure the health, safety and welfare of any elderly person, subject to any specific requirement for individual consent, and the right to authorize the transfer of an elderly person from a nursing home.

§ 46a-19. Lack of consent or withdrawal of consent. Reports to and comments by ombudsman

(a) If an elderly person does not consent to the receipt of reasonable and necessary protective services, or if such person withdraws the consent, such services shall not be provided or continued, except that if the commissioner of human resources has reason to believe that such elderly person lacks capacity to consent, he may seek court authorization to provide necessary services, as provided in section 46a-20.

(b) The department of human resources, within ten calendar days of the referral of any case for the provision of protective services, shall furnish the regional ombudsman a written report outlining the intended plan of services. The regional ombudsman shall have the right to comment on the proposed plan, and a copy of the regional ombudsman's comments shall be forwarded to the state ombudsman for subsequent action, if required.

§ 46a-20. Appointment of conservator for elderly person lacking capacity to consent to protective services

(a) If the commissioner of human resources finds that an elderly person is being abused, neglected, exploited or abandoned and lacks capacity to consent to reasonable and necessary protective services, he may petition the probate court for appointment of a conservator of the elderly person pursuant to the provisions of chapter 779, in order to obtain such consent.

(b) Such elderly person or the individual, agency or organization designated to be responsible for the personal welfare of the elderly person shall have the right to bring a motion in the cause for review of the probate court's determination regarding the elderly person's capacity or an order issued pursuant to this chapter.

(c) The probate court may appoint, if it deems appropriate, the commissioner of human resources to be the conservator of the person of such elderly person.

(d) In any proceeding in probate court pursuant to provisions of this chapter, the probate court shall appoint an attorney to represent the elderly person if he is without other legal representation.

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§ 46a-21. Assistance by public or private agencies

In performing the duties set forth in the chapter, the regional ombudsmen and the department of human resources may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available.

§ 46a-22. Periodic review of cases in which protective services are provided. Consent to continuation of services

Subsequent to the authorization for the provision of reasonable and necessary protective services, the department of human resources shall initiate a review of each case within forty-five days, to determine whether continuation of, or modification in, the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from other involved state and local groups, agencies and departments, and shall comply with the consent provisions of this chapter. Reevaluations of each such case shall be made every ninety days thereafter. The department of human resources shall advise the appropriate regional ombudsman of the decisions relative to continuation of protective services for each such elderly person.

§ 46a-23. Payment for protective services. Procedures when elderly person unable to pay

Concurrent with the implementation of any protective services, an evaluation shall be undertaken by the department of human resources, pursuant to regulations which shall be adopted by the commissioner of human resources, in accordance with chapter 54, regarding the elderly person's financial capability for paying for the protective services. If the person is so able, procedures for the reimbursement for the costs of providing the needed protective services shall be initiated. If it is determined that the person is not financially capable of paying for such needed services, the services shall be provided in accordance with policies and procedures established by the commissioner of human resources for the provision of welfare benefits under such circumstances.

§ 46a-24. Referral for criminal investigation or proceedings

If as a result of any investigation initiated under the provisions of this chapter, a determination is made that a caretaker or other person has abused, neglected, exploited or abandoned an elderly person, such information shall be referred in writing to the appropriate office of the state's attorney, which shall conduct such further investigation, if any, is deemed necessary and shall determine whether criminal proceedings should be initiated against such caretaker or other person, in accordance with applicable state law.

(1977, P.A. 77-613, § 11, eff. Jan. 1, 1978.)

§ 46a-25. Regulations

Regulations shall be promulgated by the commissioner on aging, in conjunction with the commissioner of human resources, to carry out the provisions of this chapter.

* * *

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CHAPTER 815a

FAMILY MATTERS [NEW]

Sec.
46b-15. Relief from physical abuse by a family member. Application. Court orders.
Duration. Copy. Other remedies.

§ 46b-15. Relief from physical abuse by a family member. Application. Court orders. Duration. Copy. Other remedies

(a) Any adult person who has been subjected to a continuous threat of present physical pain or physical injury by a family member, household member, former spouse, or parent of the applicant's child, may make an application to the superior court for relief under this section.

(b) The application shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application the court shall order that a hearing on the application be held not later than fourteen days from the date of the order. Service shall be made upon the respondent not less than five days before the date of the hearing. The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. Such relief may include but is not limited to an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) assaulting, molesting, sexually assaulting or attacking the applicant or (3) entering the family dwelling or the dwelling of the applicant. If an applicant alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate. The court shall cause notice of the ex parte order to be served upon the respondent along with a copy of the application and notice to the respondent of the date set for hearing the application pursuant to the provisions of this subsection.

(c) Every order of the court made in accordance with this section shall contain the following language: "This order may be extended by the court beyond ninety days. In accordance with section 53a-107, entering or remaining in a building or any other premises in violation of this order constitutes criminal trespass in the first degree. This is a criminal offense punishable by a term of imprisonment of not more than one year, a fine of not more than one thousand dollars or both."

(d) No order of the court shall exceed ninety days, except that an order may be extended by the court upon motion of the applicant for such additional time as the court deems necessary to protect the applicant from bodily harm. If the respondent has not appeared upon the initial application, service of a motion to extend an order may be made by first-class mail directed to the respondent at his or her last known address.

(e) Upon the granting of an application, the court shall, upon request, provide a certified copy of the order to the applicant.

(f) A caretaker who is providing shelter in his or her residence to a person sixty years or older shall not be enjoined from the full use and enjoyment of his or her home and property. The superior court may make any other appropriate order under the provisions of this section.

(g) An action under this section shall not preclude the applicant from seeking any other civil or criminal relief.

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§ 46b-38. Relief from physical abuse by spouse. Application. Court orders. Duration. Copy. Other remedies

(a) Any adult person who has been subjected to a threat of present physical pain or physical injury by his or her spouse, may make an application to the superior court for relief under this section.

(b) The application shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application, the court shall order that a hearing on the application be held not later than fourteen days from the date of the order. Service shall be made upon the respondent not less than five days before the date of the hearing. The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. Such relief may include but is not limited to an order enjoining the respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) assaulting, molesting, sexually assaulting or attacking the applicant or (3) entering the family dwelling or the dwelling of the applicant. If an application alleges an immediate and present physical danger to the applicant, the court may issue an ex parte order granting such relief as it deems appropriate. The court shall cause notice of the ex parte order to be served upon the respondent along with a copy of the application and notice to the respondent of the date set for hearing the application pursuant to provisions of this subsection.

(c) Every order of the court made in accordance with this section shall contain the following language: "This order may be extended by the court beyond ninety days. In accordance with section 53a-107, entering or remaining in a building or any other premises in violation of this order constitutes criminal trespass in the first degree. This is a criminal offense punishable by a term of imprisonment of not more than one year, a fine of not more than one thousand dollars or both."

(d) No order of the court shall exceed ninety days, except that an order may be extended by the court upon motion of the applicant for such additional time as the court deems necessary to protect the applicant from bodily harm or, if an action for legal separation or dissolution has been commenced by either party, such relief shall continue unless modified by the court or modified by the parties by a written agreement filed with the court. If the respondent has not appeared upon the initial application, service of a motion to extend an order may be made by first-class mail directed to the respondent at his or her last known address.

(e) Upon the granting of an application, the court shall, upon request, provide a certified copy of the order to the applicant.

(f) An action under this section shall not preclude the applicant from seeking any other civil or criminal relief.

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CONFIDENTIAL COMMUNICATIONS BETWEEN VICTIM SERVICE COUNSELOR AND VICTIM

AN ACT CONCERNING CONFIDENTIAL COMMUNICATIONS BETWEEN VICTIM SERVICE COUNSELOR AND VICTIM

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) As used in this section:

(1) "Battered women's center" means any office, shelter, host home or center offering assistance to battered women through crisis intervention, emergency shelter, referral, and medical and legal advocacy, and which meets the department of human resources criteria of service provision for such centers.

(2) "Battered women's counselor" means any person engaged in a battered women's center (A) who has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of battering, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system and information about state and community resources for battered women, (B) who is certified as a counselor by the battered women's center which provided such training, (C) who is under the control of a direct service supervisor of a battered women's center, and (D) whose primary purpose is the rendering of advice, counsel and assistance to, and the advocacy of the cause of, battered women.

(3) "Confidential communication" means information transmitted between a victim of a battering or a sexual assault and a battered women's counselor or sexual assault counselor in the course of that relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than any person who is present to further the interests of the victim in the consultation or any person to whom disclosure is reasonably necessary for the transmission of the information or for the accomplishment of the purposes for which such counselor is consulted, and includes all information received by, and any advice, report or working paper given or made by,

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such counselor in the course of the relationship with the victim.

(4) "Rape crisis center" means any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal advocacy and follow-up counseling and which meets the department of health services criteria of service provision for such centers.

(5) "Sexual assault counselor" means any person engaged in a rape crisis center who (A) has undergone a minimum of twenty hours of training which shall include, but not be limited to, the dynamics of sexual assault and incest, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system, information about hospital and medical systems and information about state and community resources for sexual assault victims, (B) is certified as a counselor by the sexual assault center which has provided such training, (C) is under the control of a direct services supervisor of a rape crisis center, and (D) whose primary purpose is the rendering of advice, counseling and assistance to, and the advocacy of the cause of, victims of sexual assault.

(6) "Victim" means any person who consults a battered women's counselor or a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by a battering or a sexual assault.

(b) A battered women's counselor or a sexual assault counselor shall not disclose any confidential communications made to such counselor by a victim in any civil or criminal case or proceeding or in any legislative or administrative proceeding unless the victim making the confidential communications waives the privilege, provided under no circumstances shall the location of the battered women's center or rape crisis center or the identity of the battered women's counselor or sexual assault counselor be disclosed in any civil or criminal proceeding.

(c) When a victim is deceased or has been adjudged incompetent by a court of competent jurisdiction, the guardian of the victim or the executor or administrator of the estate of the victim may waive the privilege established by this section.

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(d) A minor may knowingly waive the privilege established by this section. In any instance where the minor is, in the opinion of the court, incapable of knowingly waiving the privilege, the parent or guardian of the minor may waive the privilege on behalf of the minor, provided such parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding.

(e) The privilege established by this section shall not apply: (1) In matters of proof concerning chain of custody of evidence; (2) in matters of proof concerning the physical appearance of the victim at the time of the injury; or (3) where the battered women's counselor or sexual assault counselor has knowledge that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.

(f) The failure of any party to testify as a witness pursuant to the provisions of this section shall not result in an inference unfavorable to the state's cause or to the cause of the defendant.

Category	Citation
1. Victim Compensation Program	11-9001 et seq.
1.1 Responsible Agency	11-9003
1.2 Eligible Claimants	11-9005(1),(2), 11-9006(a)(b)
1.3 Losses Covered	11-9002(8), 11-9005
1.4 Minimum and Maximum Award	11-9007(b),(d)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	11-9006(a)(4)
1.8 Emergency Award	
1.9 Funding	11-9010 et seq.
2. Restitution	
2.1 Sentencing Option	11-4101 et seq.
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	11-4106
2.5 Administration/Enforcement	11-4104, 11-4105
3. Escrow and Forfeiture of Offender Profits	11-9101 et seq.
4. Witness Fees	10-8903; 11-5306
5. Victim's Bill of Rights	See, House Subst. No. 1 for House Joint Res. No. 26 (April 7, 1982)
6. Protection from Intimidation	
6.1 Crime Defined	11-1263, 11-3531 et seq.
6.2 Protective Orders	11-3535
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	11-6541(b) (of offender on work release)
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	11-8307
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	31-3910
12.4 Abuse, Neglect, Exploitation - Protective Services	31-3901 et seq., 31-3903, 31-3904
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	11-9015
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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Delaware Code Annotated

Title 11

CHAPTER 90. COMPENSATION FOR INNOCENT VICTIMS OF CRIME

Sec.	Sec.
9001. Declaration of purpose.	9010. Recovery from the criminal.
9002. Definitions.	9011. Assignment and subrogation.
9003. Compensation Board.	9012. Penalty assessment.
9004. Functions of the Board.	9013. Annual reports.
9005. Administrative provisions; compensation.	9014. Compensating fine.
9006. Denial of claim; reduction.	9015. Oaths, testimony and production of records.
9007. Payment of compensation.	9016. Filing false claim.
9008. Form of claim; investigation.	9017. Persons to whom chapter applicable.
9009. Attorneys' fees.	

§ 9001. Declaration of purpose.

The General Assembly hereby declares that it serves a public purpose, and is of benefit to the State, to indemnify those persons who are victims of crimes committed within the State, and it is therefore the declared purpose of this chapter to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the families and dependents of those victims. (59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 1.)

Chapter recognizes statutory compensation. — This chapter is subtle recognition that although there is no personal duty between the State and a private citizen which guarantees protection from criminals, the harshness of the situation is best ameliorated by some form of statutory compensation, an idea not founded on traditional tort liability but out of moral considerations for the victims of society's and government's inherent limitations. *Biloon's Elec. Serv., Inc. v. City of Wilmington, Del. Super., 401 A.2d 636 (1979).*

§ 9002. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

- (1) "Board" shall mean the Violent Crimes Compensation Board as established by this chapter.
- (2) "Child" shall mean an unmarried person who is under 18 years of age, and shall include the stepchild or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.
- (3) "Crime" for purposes of this chapter shall mean:

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a. Any specific offense set forth in Chapter 5 of this title, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms;

b. Any specific offense set forth in former Chapter 3 of this title, if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms.

(4) "Dependent" shall mean a person wholly or substantially dependent upon the income of the victim at the time of victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim.

(5) "Guardian" shall mean a person who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent.

(6) "Incompetent" shall mean a person who is incapable of managing his own affairs, as determined by the Board or by a court of competent jurisdiction.

(7) "Personal injury" shall mean bodily harm, or extreme mental suffering, and shall include pregnancy of the victim.

(8) "Pecuniary loss" in instances of personal injury shall include medical expenses, including psychiatric care; nonmedical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; and loss of future earnings because of a disability resulting from such personal injury. "Pecuniary loss" in instances of death of the victim shall include funeral and burial expenses and loss of support to the dependents of the victim. "Pecuniary loss" includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage.

(9) "Victim" shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this chapter.

§ 9003. Compensation Board.

There is hereby established a Board, to be known as the Violent Crimes Compensation Board, which Board shall have the sole jurisdiction over the awarding of compensation for victims of crimes. The Board shall be composed of 5 members to be appointed by the Governor. No more than 3 members shall be of 1 major political party. Each appointment shall be effective only upon receiving consent of the Senate. The initial Chairman of the Board shall be appointed by the Governor to serve as such for 1 year, and each year thereafter the Board shall choose its Chairman. Three members shall constitute a quorum for all hearings and business of the Board, except a hearing in which the claimant has requested no more than \$500 compensation and in that instance a

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quorum of the Board shall be 1 member. The term of office of each member of the Board shall be 3 years; provided, however, that 1 of the members first appointed shall be appointed for a term of 1 year, 2 others for a term of 2 years each and the remainder of the members for a full term of 3 years. The compensation of the Chairman shall be \$5,000 annually; and the compensation of the members shall be \$4,000 annually. (59 Del. Laws, c. 519, § 1; 60 Del. Laws,

§ 9004. Functions of the Board.

The Board shall have the following functions, powers and duties:

- (1) To meet and function at any place within the State;
- (2) To appoint an Executive Secretary and such other employees as are necessary, the total number of which shall not exceed 5 at any given time. The Board shall prescribe the duties of the Executive Secretary and other employees;
- (3) To obtain the services of other governmental agencies upon request, and to utilize those services when necessary;
- (4) To adopt, promulgate, amend and rescind such rules and regulations as are required to carry out this chapter;
- (5) To receive, investigate and act upon applications for indemnification filed pursuant to this chapter;
- (6) To publish reports, information and other data collected by the Board as results of its investigations and research;
- (7) To annually render to the Governor and the General Assembly a written report of its activities and of its recommendations;
- (8) To provide indemnification claim forms for purposes of this chapter, and to specify the information to be included in such forms. (59 Del. Laws, c. 519, § 1.)

§ 9005. Administrative provisions; compensation.

In any instance in which a person is injured or killed by any crime as the same is defined in this chapter, then he or his estate may file a claim with the Violent Crimes Compensation Board for indemnification of all pecuniary loss which is a direct result of such crime:

- (1) If a claim is approved as filed, the award shall be the amount of pecuniary loss actually and reasonably sustained by reason of the personal injury in question minus the amount the claimant has or will receive as indemnification from any other source, including Blue Cross and Blue Shield insurance.

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(2) In the event of a death caused by a crime of violence, any person who legally or voluntarily assumes the obligation to pay the medical or burial expenses incurred as a direct result of such injury and death shall be eligible to file a claim with the Board. This provision for payment in case of death shall not apply to any insurer or public entity.

(3) The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable. Any claimant who is aggrieved by the Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the Superior Court within 30 days of the decision of the Board. Any appeal to Superior Court shall not be de novo.

(4) Payment may be made in accordance with this chapter, whether or not the alleged perpetrator of the criminal act is prosecuted or convicted, in the discretion of the Board. Payment may be made even though the person committing the crime is legally deemed to not have intended his act by reason of age, insanity, drunkenness or is otherwise deemed legally incapable of mens rea.

(5) Upon determination of the Board of the amount of compensation due, the Board shall issue to the Treasurer of the State a statement signed by the Chairman under oath certifying such amount. Upon receipt of such certification by the Board, the Treasurer shall pay to the person named therein such amounts as are specified and under the conditions specified therein. The Treasurer shall make no payments until the time for appeal of the certification has passed unless the claimant has waived his right to appeal in writing. If an appeal is made, there shall be no payment until there has been a binding legal adjudication of the matter.

§ 9006. Denial of claim; reduction.

(a) The Board shall deny payment of a claim for the following reasons:

- (1) Where the claimant was the perpetrator of the crime on which the claim is based, or was a principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred;
- (2) Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime;
- (3) Where the claimant refused to give reasonable cooperation to state or local law-enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question;
- (4) Where the claim has not been filed within 1 year after the personal injury on which the claim is based, unless an extension is granted by the Board.

(b) In determining whether or not to make an award under this chapter, or in determining the amount of any award, the Board may consider any circumstances it deems to be relevant, including the behavior of the victim which

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directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(c) If the victim bears any share of responsibility that caused his injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question, either through negligence or through wilful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.

§ 9007. Payment of compensation.

(a) Any person, regardless of age or mental condition, is entitled to make application for compensation under this chapter if he is a victim as defined herein. In any instance in which the person entitled to make application is deemed by law to be incompetent he may nevertheless appear in person or the application may be made on his behalf by any person acting as his relative, guardian or attorney. Every victim making application shall be entitled to appear and be heard by the Board.

(b) Except in cases of dire hardship, as determined by the Board, there shall be no payment of compensation where the claim is for less than \$25. Awards may be paid in a lump sum, or in periodic payments as determined by the Board. Each and every payment shall be exempt from attachment, garnishment or any other remedy available to creditors for the collection of a debt.

(c) The Board may require any injured person filing a claim pursuant to this chapter to submit to a physical or mental examination by a physician or physicians selected by the Board.

(d) No compensation shall be awarded under this chapter to any individual victim (or in case of the death of the victim to dependent relatives or to the victim's legal representative) in a total amount in excess of \$10,000. The Board shall deduct any payments received by the victim or by any of his dependents from the offender or from any person on behalf of the offender, from any insurer, or from the United States, the State or any state or any of its subdivisions from its award of compensation if such payments were in any manner made to compensate such person for personal injury or death arising from the same incident.

(e) Although a person otherwise incompetent may appear and press his claim before the Board, payment of compensation shall not be made directly to any person legally incompetent to receive same but shall be made to a third person for the benefit of such incompetent. In the case of any payment for the benefit of a child or incompetent, the Board shall order the payee to file an accounting with the Board no later than January 31 of each year for the previous calendar year, and to take such other action as the Board shall determine to be necessary and appropriate for the benefit of the child or incompetent. (59 Del. Laws, c. 519,

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§ 9008. Form of claim; investigation.

(a) All claims filed with the Board shall be written and verified and shall accurately describe the crime and circumstances which brought about the injury, damage or death, shall state the time and place the injury occurred, state the names of all persons involved if known and shall contain the amount claimed by the applicant. If the Board in its discretion decides that a claim should be investigated such investigation must be initiated within 30 days of the filing of the claim. A claim may be summarily denied if it does not contain a full statement of the information required. If no investigation is initiated, the Board shall, within the 30-day period, notify the applicant to appear and meet with the members of the Board.

(b) If there is doubt concerning the existence or nonexistence of any material fact, the Board shall conduct its own investigation and, when the investigation is concluded, shall fix the time and place for a hearing on the claim. The Board shall mail notices of the time and place of such hearing to all interested persons and agencies. Within 90 days of the conclusion of any and all hearings on the matter, the Board shall mail a statement of its decision to award or deny the claim and a statement of any conditions under which the claim shall be awarded.

§ 9009. Attorneys' fees.

A claimant need not be represented by an attorney before the Board, but if such person is represented the Board may award an amount for services rendered. Such fee shall not exceed \$1,000 or 15% of the amount awarded, whichever sum is less, and shall be in addition to the amount of compensation awarded to the claimant. An attorney shall not charge, demand, receive or collect for services rendered in connection with any proceedings under this chapter any amount other than awarded as attorney's fees under this section. (59 Del. Laws, c. 519, § 1.)

§ 9010. Recovery from the criminal.

(a) Whenever any person is convicted of an offense and a payment of compensation is, or has been, made under this chapter for a personal injury or death resulting from the act constituting such offense, the State may institute an action against such person for the recovery of the whole or any specified part of the compensation in any Superior Court within the State, or in any other court, either state or federal, if such court has custody or control of funds of the criminal or which may be awarded to the criminal. Any amounts recovered under this section shall be deposited to the fund which finances the administration of this chapter.

(b) Any payment of compensation under this chapter shall not affect any right of any person to recover damages in a civil action from the person or persons convicted of the offense giving rise to the claim for compensation.

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§ 9011. Assignment and subrogation.

(a) Awards and recoveries granted under this chapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) There shall be no substitution or subrogation, whether conventional or legal, of any indebtedness or right of action by virtue of any claim of guarantee or surety, agency, lien, payments or advances made, or any claim made by the person convicted of the act giving rise to any compensation awarded under this chapter. (59 Del. Laws, c. 519, § 1.)

(a) In addition to, and at the same time as, any fine is assessed to any criminal defendant, there shall be levied an additional penalty of 15% of every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses. Where multiple offenses are involved, the penalty assessment shall be based upon the total fine for all offenses. When a fine, penalty or forfeiture is suspended, in whole or in part, the penalty assessment shall not be suspended.

(b) Upon collection of the penalty assessment, the same shall be paid over to the Prothonotary or clerk of court as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this chapter, which account shall be designated the "Victim Compensation Fund," which is hereby created. (59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 9.)

§ 9013. Annual reports.

The Board shall transmit to the Governor, State Auditor and the General Assembly an annual report of its activities under this chapter, including the name of each applicant for compensation, the amount claimed and the amount of compensation awarded. (59 Del. Laws, c. 519, § 1; 60 Del. Laws, c. 436, § 10.)

§ 9014. Compensating fine.

In any court of this State upon the conviction of any person for a crime resulting in the personal injury or death of another person, the court may, in addition to any other penalty, order such person to pay a compensating fine, in lieu of but greater than, the penalty set forth in § 9012 of this title. The amount of such fine shall be in the discretion of the court and shall be commensurate with the malice shown and the injury done to the victim. All fines paid in accordance with this section shall be deposited into the Victim Compensation Fund.

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§ 9015. Oaths, testimony and production of records.

The Board, each member of the Board and the Executive Director shall have the power to administer oaths, subpoena witnesses and compel the production of books, papers and records relevant to any investigation or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question, or produce any books, papers and records relevant to any such investigation or hearing may be compelled to do so by order of the Superior Court. (60 Del. Laws, c. 436, § 11.)

§ 9016. Filing false claim.

(a) Any claim under this chapter which is false in part or in whole shall constitute a false written statement in violation of § 1233 of this title.
(b) Any person who files a false claim under this chapter shall forfeit any compensation and shall reimburse and repay the Board for any compensation received pursuant to this chapter. (60 Del. Laws, c. 436, § 12.)

§ 9017. Persons to whom chapter applicable.

This chapter shall apply to all persons who are victims of crimes committed on January 1, 1975, or thereafter within this State. (60 Del. Laws, c. 436, § 13.)

CHAPTER 41. FINES, COSTS, PENALTIES AND FORFEITURES

Subchapter I. General Provisions	Subchapter II. Special Law Enforcement Assistance Fund
Sec.	Sec.
4101. Payment of fines, costs and restitution upon conviction.	4110. Purpose; created.
4102. Payment of costs upon acquittal.	4111. Use.
4103. Refund of fines upon reversal of conviction.	4112. Source of funds.
4104. Fines, costs or restitution; how collected; holding operator's license as security for payment.	4113. Disbursement of funds.
4105. Default in payment; inability to pay.	4114. Accounting of funds; permissible types of investigative activities.
4106. Restitution for property damage or loss.	4115. Review.
	4116. Excess funds.

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§ 4101. Payment of fines, costs and restitution upon conviction.

(a) On conviction upon indictment or information for any crime or offense, all the costs shall be paid by the party convicted.

(b) Immediately upon imposition by a court, including a justice of the peace, of any sentence to pay a fine, costs, restitution or all 3, the same shall be a judgment against the convicted person for the full amount of the fine, costs, restitution or all 3, assessed by the sentence. If not paid promptly upon its imposition or in accordance with the terms of the order of the court, the clerk or Prothonotary shall cause the judgment to be entered upon the civil judgment docket of the court whence it may be executed and enforced or transferred in the same manner as other judgments of the court; provided, however, that where a stay of execution is otherwise permitted by law such a stay shall not be granted as a matter of right but only within the discretion of the court.

(c) The provisions of this section are cumulative and shall not impair any judgment given upon any conviction.

§ 4102. Payment of costs upon acquittal.

(a) If, upon indictment or information, the defendant is acquitted, the costs shall be paid by the county.

(b) In cases of surety of the peace (which are herein deemed to be cases of a criminal nature) the court may order that the costs shall be paid by the defendant or by the prosecutor or by the county, as it deems just.

§ 4104. Fines, costs or restitution; how collected; holding operator's license as security for payment.

(a) When a court imposes a fine, costs or restitution upon a defendant, the court or justice of the peace may direct as follows:

(1) That the defendant pay the entire amount at the time sentence is imposed; or

(2) That the defendant pay a specified portion of the fine, costs or restitution at designated periodic intervals, and in such case may direct that the fine, costs or restitution be remitted to a probation officer who shall report to the court, at such periods as the court may direct, any failure to comply with the orders;

(3) Where the defendant is sentenced to a period of probation as well as fine, costs or restitution that payment of the fines, costs or restitution shall be a condition of the probation.

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(b) Any court, including a justice of the peace, may, in its discretion, permit any person sentenced to pay a fine upon conviction of crime, in lieu of the payment of the fine ordered, to execute a bond acknowledging the amount of the fine imposed upon him as a debt due and owing to this State and binding himself unto this State in an amount equal to 10 times the fine imposed. The bond shall be so conditioned that, should the amount of the fine imposed be paid to this State on or before the tenth day next following the day on which the fine is imposed, then in that event the bond shall be null and void. The bond shall contain a warrant of attorney authorizing the Prothonotary or any attorney of record in this State or elsewhere to appear in any court, including a justice of the peace, and confess judgment against the person so bound. Upon execution of the bond the convicted person shall be required to list on the reverse thereof all motor vehicles and real property owned by him or in which he has any title or interest with a description and the location thereof.

(c) Any court may, in its discretion, direct any person sentenced to pay a fine or restitution upon conviction of a crime, who is employed within this State or by a Delaware resident or employer, to execute an assignment of a specified periodic sum not to exceed $\frac{1}{3}$ of his total earnings, which assignment shall direct his employer to withhold and remit that amount to this State up to the total of the fine, costs and restitution imposed.

An assignment of earnings executed in accordance with this subsection shall be binding upon an employer in the same manner as an attachment of wages pursuant to Title 10, except that an assignment need be filed only once with the employer who shall make the withholding and remittances until the full amount is paid. An amount of total earnings consistent with federal law may be assigned. An employer shall take no action against an employee who has executed an assignment, and the penalty imposed upon an employee solely because of an assignment under this subsection shall be in accordance with the manner set forth for attachments.

(d) For purposes of ensuring the payment of fines, restitution and the enforcement of any orders imposed under this section, the court shall retain jurisdiction over the convicted person until any fine or restitution imposed shall have been paid in full. The court may write off the fines, costs and restitution of any convicted person when the court receives evidence that such person is deceased.

(e) Whenever any person lawfully possessed of an operator's license theretofore issued to him by the Division of Motor Vehicles of the Department of Public Safety of the State, or under the laws of any other state or territory, or of the District of Columbia, shall be arrested and charged with any violation of the traffic or criminal laws of this State, or of any political subdivision thereof, a court, as a condition of sentencing, may take and hold, as security for the payment of any fine, costs, restitution or Victims Compensation Fund assessment, the operator's license so issued to the defendant.

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(f) Any person whose operator's license has been deposited with a court, pursuant to subsection (e) above, shall be issued a receipt by the court taking said license upon a form substantially as set forth in this subsection, and thereafter said person shall be permitted to operate a motor vehicle upon the highways of the State during the pendency of the case in which the license was taken, unless his license or privilege to operate a motor vehicle is otherwise revoked, suspended or cancelled.

FORM OF RECEIPT

The operator's license of, license number is held by the Court, State of Delaware, as security for the payment of a fine, costs, restitution or Victims Compensation Fund assessment in Case No. Please accept this receipt as a substitute for that license as provided by Title 11, § 4104(e), Delaware Code, as amended. Payment is due by This receipt is not valid after said date. Failure to appear will result in license suspension. An attempt to secure, or the securing of, a duplicate operator's license during the period in which this court holds an operator's license shall be considered as a contempt of court under 11 Del. C., § 1271(3).

..... Judge

(g) The clerk of the court in which the sentence was imposed and for which a person's license was taken as security, pursuant to subsection (e) of this section, shall immediately forward to the Division of Motor Vehicles of the State the license if the person fails to pay by the date indicated in the receipt as prescribed by subsection (f) above. The Director of the Division of Motor Vehicles shall, upon receipt of a license so forwarded by the clerk, suspend the operator's license and driving privileges of the defaulting driver until notified by the court that payment of the fine, costs, restitution or Victims Compensation Fund assessment has been made. If the person be from another state or territory or the District of Columbia of the United States, the Director of the Division of Motor Vehicles shall further advise the motor vehicle administrator of the state, territory or the District of Columbia of this State's suspension and request that said person's license to drive be suspended until the fine, costs, restitution or Victims Compensation Fund assessment have been paid.

(h) The clerk of the court in which the sentence was imposed and for which a person's operator's license was taken as security, pursuant to subsection (e) of this section, shall immediately return to said person his operator's license upon payment of the fine, costs, restitution or Victims Compensation Fund assessment within the period as prescribed by the sentencing judge and as reflected in the form set forth in subsection (f) above.

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§ 4105. Default in payment of fine; inability to pay.

(a) No person sentenced to pay a fine, costs or restitution upon conviction of a crime shall be ordered to be imprisoned in default of the payment of such fine, costs or restitution.

(b) Where a person sentenced to pay a fine, costs, restitution or all 3, on conviction of a crime is unable or fails to pay such fine, costs, restitution or all 3, at the time of imposition of sentence or in accordance with the terms of payment set by the court, the court may order the person to report at any time to the Commissioner of the Department of Correction, or a person designated by him, for work for a number and schedule of hours necessary to discharge the fine, costs or restitution imposed. For purposes of this section, the hourly rate shall be established in accordance with the then prevailing federal minimum wage, and shall be used in computing the amount credited to any person discharging fines, costs and restitution. In cases involving Justices of the Peace Courts, the Chief Magistrate thereof shall establish guidelines for the number of hours of work which may be assigned and the Courts shall adhere to said guidelines. The Department may approve public work assignments for convicted persons in accordance with subsection (c) of this section, whereupon the Commissioner, or a person designated by him, may assign the convicted person to work under the supervision of any state, county or municipal agency on any project or assignment specifically certified for that purpose. The Department of Correction shall not compensate any convicted person assigned to work under the supervision of any state, county or municipal agency but shall credit such person with the number of hours of satisfactory service. When the number of such hours equals the number of hours imposed by the court, the Department shall certify this fact to the appropriate court, and the court shall proceed as if the fines, costs and restitution had been paid in cash. Fines, costs and restitution successfully worked off in the above manner shall not be considered as receivables of the court, but the records shall show the hours worked. Failure to comply with an order of the court made pursuant to this section shall

be punishable as civil contempt and all courts shall have the power to punish as a civil contempt any convicted person who fails to comply with such an order. In the event a person serves a sentence of incarceration for contempt of court in accordance with this subsection, the length of the sentence being with the court's discretion and based upon the amount of the outstanding fines and costs, the court in its discretion may order that any fines and costs totalling less than \$1,000 shall be cancelled.

(c) Any agency of the State, county or any municipality or any nonprofit organization approved by the court may submit public work projects or proposed assignments to the Department of Correction for certification as approved public work projects under this section. Upon certification the agency will be notified and the Commissioner of the Department of Correction will be authorized to begin to assign convicted persons to the certified project or assignment.

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(d) Notwithstanding subsection (a) of this section, where a defendant sentenced to be imprisoned is ordered to pay a fine, costs, restitution or all 3, the court may order an additional sentence of imprisonment in lieu of requiring the payment of the fine, costs, restitution or all 3; provided, however, that this additional sentence of imprisonment may not exceed 30 days, to be served concurrently or consecutively with the sentence originally imposed, as the court may order.

(e) A court having probationary powers may, in its discretion, treat any failure to comply with a court order in respect to fines, costs, restitution or all 3 either as a civil contempt or as if the defendant had been placed on probation and the probation violated; provided, however, that any sentence for violation of probation may not exceed 30 days.

§ 4106. Restitution for property damage or loss.

(a) Any person convicted of stealing, taking, receiving, converting, defacing or destroying property, shall be liable to each victim of his offense for the value of the property or property rights lost to the victim and for the value of any property which has diminished in worth as a result of the actions of such convicted offender and shall be ordered by the court to make restitution. If the court does not require that restitution be paid to a victim, the court shall state its reason on the record. The convicted offender shall also be liable for direct out-of-pocket losses, loss of earnings and other expenses and inconveniences incurred by victim as a direct result of the crime. For each criminal offense resulting in arrest in which property is alleged to have been unlawfully taken, damaged or otherwise diminished in value, a loss statement shall be prepared, by the police or by the victim when there is no police involvement, documenting for the court the value of the property lost or diminished as a direct result of the crime.

(b) In accordance with the evidence presented to the court, the court shall determine the nature and amount of restitution, if any, to be made to each victim of the crime of each convicted offender. The offender shall be ordered to pay a fixed sum of restitution or shall be ordered to work a fixed number of hours under the work referral program administered by the Department of Correction, or both.

(c) In the event a convicted offender is ordered by the court to pay fines, costs or other financial obligations along with restitution, payments shall first be applied to victim compensation fund, next to pay restitution and then to the other payments ordered to be made.

(d) Each court shall establish procedures for the collection and disbursement of funds ordered under this section, including notification of the victim that restitution has been ordered.

(e) An order of restitution may not preclude the victim from proceeding in a civil action to recover damages from the offender. A civil verdict shall be reduced by the amount of restitution paid under the criminal restitution order.

* * *

DELAWARE

CHAPTER 91. DISTRIBUTION OF MONEYS RECEIVED AS RESULT OF COMMISSION OF CRIME

Sec.
9101. Findings.
9102. Definitions.
9103. Distribution of moneys.

Sec.
9104. Board as exclusive escrow agent.
9105. Judicial review.
9106. Penalties.

§ 9101. Findings.

The General Assembly finds that it is against public policy and the welfare of the citizens of Delaware to allow a person accused or convicted of a crime to benefit financially from a published reenactment of said crime or any incidents involved therein. The General Assembly further finds that a system is required to provide for the distribution of moneys received as a result of the commission of a crime in order that victims of crime may be adequately compensated. (64 Del. Laws, c. 169, § 1.)

§ 9102. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Board" shall mean the Violent Crimes Compensation Board, as established by this title.

(2) "Victim" shall mean a person who suffers personal, physical, mental or emotional injury, or pecuniary loss, as a direct result of the commission of a crime enumerated in Chapter 5 of this title.

(3) "Person convicted of a crime" shall mean any person convicted of a crime in this State either by entry of a plea of guilty or by conviction after trial, and any person who has voluntarily and intelligently admitted the

commission of a crime for which such person is not prosecuted. (64 Del. Laws, c. 169, § 1.)

§ 9103. Distribution of moneys.

(a) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person accused or convicted of a crime in this State, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live enter-

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tainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the Board and pay over to the Board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives. The Board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by:

(1) Such convicted person; or

(2) By such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within 5 years from the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgement for damages against such person or his representatives.

(b) The Board, at least once every 6 months for 5 years from the date it receives such moneys, shall cause to have published a legal notice in a newspaper or newspapers of general circulation in the county wherein the crime was committed, and in the county contiguous to such county, advising such victims that such escrow accounts are available to satisfy money judgements pursuant to this chapter. The Board may, in its discretion, provide for such additional notice as it deems necessary.

(c) Upon dismissal of charges or acquittal of any accused person, the Board shall immediately pay over to such accused person the moneys in the escrow account established on behalf of such accused person.

(d) Upon a showing by any convicted person that 5 years have elapsed from the date of establishment of such escrow account, and further that no actions are pending against such convicted person pursuant to this chapter, the Board shall immediately pay over any moneys in such escrow account to such person or his legal representatives.

(e) For purposes of this chapter, a person found not guilty as a result of the defense of mental disease or defect pursuant to this title shall be deemed to be a convicted person.

(f) Whenever it is found, pursuant to this title, that a person accused of a crime is unfit to proceed as a result of mental disease or defect because such person lacks the capacity to understand the proceedings against him or to assist in his own defense, the Board shall bring an action in a court of competent jurisdiction to determine disposition of the escrow account.

(g) Notwithstanding any inconsistent provisions of law or court rules with respect to the timely bringing of an action, the 5 year period provided for in this chapter shall not begin to run until an escrow account has been established.

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(h) Notwithstanding the foregoing provisions of this chapter, the Board shall make payments from an escrow account to any person accused or convicted of crime upon order of any court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process. The Board may in its discretion and after notice to victims of the crime make payments from the escrow account to a representative of any person accused or convicted of a crime for the necessary fees and expenses incident to the generation and procurement of the moneys paid into the escrow account, provided the Board finds that such payments would be in the best interest of the victims of the crime and would not be contrary to public policy. The total of all payments made from the escrow account under this subsection shall not exceed one-fifth of the total moneys paid into the escrow account and available to satisfy civil money judgements obtained by victims of the crime.

(i) Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this chapter, shall be null and void as against the public policy of this State.

(j) For purposes of this chapter, notwithstanding any other provision of the Delaware Code, claims on moneys in the escrow account shall have the following priorities:

(1) Payments ordered by the Board or a court pursuant to subsection (h) of this section.

(2) Judgements obtained by the Division of Revenue, State of Delaware, against the convicted or accused person.

(3) Subrogation claims of the State in an amount not to exceed one-third of the net amount of the civil judgement obtained by a victim which is payable directly to the victim from the escrow account.

(4) Civil judgements of the crime victims.

(5) Other judgement creditors or persons claiming moneys through the person accused or convicted of a crime who present lawful claims, including local government tax authorities.

(6) The person accused or convicted of the crime.

(k) The Board may bring an action in a court of competent jurisdiction for a declaratory judgement where it cannot determine the priority of claims and the proper distribution of any escrow account.

(l) Moneys in an escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this chapter. (64 Del. Laws, c. 169, § 1.)

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§ 9104. Board as exclusive escrow agent.

Notwithstanding any other provisions of law, the Board shall have exclusive jurisdiction and control, as escrow agent, over any moneys subject to this chapter. No distribution of moneys in such escrow accounts shall be made except by determination and order of the Board. (64 Del. Laws, c. 169, § 1.)

§ 9105. Judicial review.

Any party aggrieved by a final determination and order of the Board may appeal such final determination and order to the Superior Court. (64 Del. Laws, c. 169, § 1.)

§ 9106. Penalties.

Any person convicted of a violation of this chapter shall be guilty of a class A misdemeanor. (64 Del. Laws, c. 169, § 1.)

Title 10

§ 8903. Witnesses.

(a) The fees of witnesses, for the services specified, shall be as listed below: For attendance in any court, or before referees under a rule of court, or before a justice in case of forcible entry, or landlord vs. tenant, or before a county governing body, or before a Commissioner, Register in Chancery, or Prothonotary, executing a commission or rule for taking depositions, or before either House of the General Assembly, or a committee appointed by either House, each day \$2, and 3 cents per mile going and returning. Attendance before a justice of the peace, or before 2 justices, in all cases except as before provided for, 50 cents, and 2 cents per mile going and returning. A person who has been committed in default of a recognizance to appear as a witness in a criminal case, shall, for the time he is detained, receive such compensation as the court allows.

(b) The State Treasurer or Department of Finance shall, upon the production of a certificate of attendance under the hand of the Prothonotary, pay the fees of witnesses on behalf of the State, or on behalf of a person tried and acquitted, upon a criminal charge in the Superior Court of his county.

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(c) The Prothonotary shall pay to the State Treasurer all fees of witnesses collected under this section as costs to reimburse the State Treasurer for such fees as have been paid in advance to such witnesses by the State Treasurer after the effective date of this subsection.

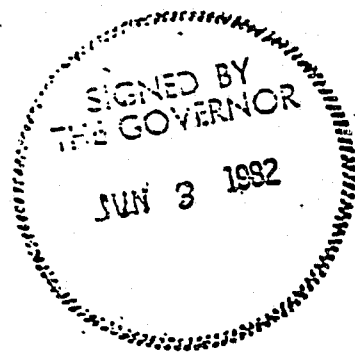
§ 8904. Witnesses; Court of Common Pleas for Kent County.

The fees of witnesses in the Court of Common Pleas for Kent County, for the services specified, shall be as listed below:
For each day's attendance. \$ 1.00
Three cents per mile going and returning.

§ 5306. Witness fees.

(a) The witnesses attending the Court in criminal cases shall receive the same fees as in the Superior Court.
(b) In criminal cases witness fees shall be taxed as part of the costs of such proceeding.

* * *



DELAWARE

SPONSOR: Reps. Riddagh, Spence,
Minner, Mack, Jonklert,
Sinecock, Cathcart, Bennett,
Roy, Smith, Dixon, Powell,
Barnes, Corrozi, Oberle,
Edwards, Harrington, Fallon,
Buckworth, Maroney, Soles,
Derrickson, Van Sciver &
Campanelli; Sens. Vaughn,
Sharp, Arnold, Littleton,
Cook, Citro, Hughes, Neal,
Holloway, Torbert & McBride

HOUSE OF REPRESENTATIVES

131ST GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. _____

FOR

HOUSE JOINT RESOLUTION NO. 26

PROPOSING A "BILL OF RIGHTS" FOR DELAWARE RESIDENTS WHO ARE VICTIMS OF CRIME.

1 WHEREAS, there has been insufficient attention to the needs of crime victims and witnesses in the
2 State of Delaware; and

3 WHEREAS, the voluntary participation and cooperation of victims and witnesses is of vital
4 importance to the well-being of the criminal justice system, and its ability to function effectively; and

5 WHEREAS, it is the duty of all citizens, public officials, community organizations and public
6 agencies to play positive roles in improving the plight of crime victims and witnesses; and

7 WHEREAS, crime victims and witnesses are essential parties to the Criminal Justice Process; and

8 WHEREAS, creating a better understanding of the needs of crime victims and witnesses will help to
9 achieve fairness and effectiveness in the Administration of Criminal Justice; and

10 WHEREAS, crime victims and witnesses are entitled to fair, just, and humane treatment.

11 NOW, THEREFORE:

12 BE IT RESOLVED by the House of Representatives and the Senate of the 131st General Assembly of
13 the State of Delaware, with the approval of the Governor, that the General Assembly suggests and
14 recommends to those courts and other agencies of the State involved in law enforcement activities that
15 they should focus attention on the needs of crime victims and witnesses, and on the need to treat crime
16 victims and witnesses with dignity and sensitivity.

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Title 11

§ 1263. Tampering with a witness; class D felony.

A person is guilty of tampering with a witness when:

(1) He knowingly induces, influences or impedes any witness or victim by false statement, fraud or deceit, with intent to affect the testimony or availability of such witness; or

(2) He intentionally causes physical injury to any party or witness or intentionally damages the property of any party or witness on account of his past, present or future attendance at any court proceeding or official proceeding of this State or on account of this past, present, or future testimony in any action pending therein.

(3) He knowingly intimidates a witness or victim under circumstances set forth in subchapter III of Chapter 35 of this title.

Tampering with a witness is a class D felony.

§ 3531. Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Malice" shall mean an intent to vex, annoy, harm or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

(2) "Victim" shall mean any natural person against whom any crime (as defined under the laws of this State, of any other state or of the United States) has been attempted, is being perpetrated or has been perpetrated.

(3) "Witness" shall mean any natural person:

a. Having knowledge of the existence or nonexistence of facts relating to any crime; or

b. Whose declaration under oath is received, or has been received, as evidence for any purpose; or

c. Who has reported any crime to any peace officer, prosecuting agency, law-enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or

d. Who has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or

e. Who would be believed by any reasonable person to be an individual described in any paragraph of this subdivision.

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§ 3532. Act of intimidation; class E felony.

Except as provided in § 3533 herein, every person who knowingly and with malice prevents or dissuades (or who attempts to prevent or dissuade) any witness or victim from attending or giving testimony at any trial, proceeding or inquiry authorized by law is committing an act of intimidation and is guilty of a class E felony. A person who knowingly and with malice attempts to prevent another person who has been the victim of a crime, or a witness to a crime (or any person acting on behalf of a victim or witness) from:

- (1) Making any report of such crime or victimization to any peace officer, law-enforcement officer, prosecuting agency, probation officer, parole officer, correctional officer or judicial officer;
- (2) Causing a complaint, indictment, information, probation or parole violation to be sought or prosecuted, or from assisting in the prosecution thereof; or
- (3) Arresting, causing or seeking the arrest of any person in connection with such crime or victimization is guilty of a class E felony. (63 Del. Laws, c. 275, § 3.)

§ 3533. Aggravated act of intimidation; class D felony.

Every person doing any of the acts set forth in § 3532, of this title, knowingly and with malice under 1 or more of the following circumstances, shall be guilty of a class D felony if, in addition, such act:

- (1) Is accompanied by an express or implied threat of force or violence, upon a victim, a witness or any third person (or upon the property of a victim, witness or third person);
- (2) Is in furtherance of a conspiracy;
- (3) Is committed by any person who has been convicted of any violation of this subchapter, any predecessor law hereto, the statute of any other state or any federal statute which would be a violation of this subchapter if committed in this State; or
- (4) Committed, for pecuniary gain or for any other consideration, by any person acting upon the request of another person. (63 Del. Laws, c. 275, § 3.)

§ 3534. Attempt to intimidate.

Every person attempting the commission of any act described in §§ 3532 and 3533 of this title is guilty of the offense attempted, without regard to the success or failure of such attempt. The fact that no person was actually physically injured, or actually intimidated, shall be no defense against any prosecution under this subchapter. (63 Del. Laws, c. 275, § 3.)

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§ 3535. Protective orders — Issuance.

Any court with jurisdiction over any criminal matter may in its discretion and upon good cause (which may include, but is not limited to, such matters as credible hearsay, the declaration of the prosecutor or the declaration of the defense attorney) find that intimidation or dissuasion of a victim or witness has occurred (or is reasonably likely to occur) and may issue orders including, but not limited to, the following:

- (1) An order that a defendant not violate any provision of this subchapter;
- (2) An order that a person before the court other than a defendant (including, but not limited to, a subpoenaed witness) not violate any provision of this subchapter;
- (3) An order that a designated person maintain a prescribed geographic distance from any other person specified by the court;
- (4) An order that any designated person have no communication whatsoever with any person specified by the court, except through an attorney, and under such reasonable restrictions as the court may impose;
- (5) An order for a hearing to determine if any order under this section should be issued;
- (6) An order that a particular law-enforcement agency within the jurisdiction of the court provide protection for a person specified by the court. (63 Del. Laws, c. 275, § 3.)

§ 3536. Same — Violations.

(a) A person who violates an order made pursuant to this subchapter may be punished for any substantive offense set forth in this subchapter.

(b) A person who violates an order made pursuant to this subchapter may be punished as a contempt of the court making such order. No finding of contempt shall be a bar to prosecution for a substantive offense under this subchapter, but:

- (1) Any person so held in contempt shall be entitled to credit for any punishment imposed therein, against any sentence imposed upon conviction for that offense; and
- (2) Any conviction or acquittal for any substantive offense under this subchapter shall be a bar to subsequent punishment for contempt arising out of the same act.

(c) A person who violates an order made pursuant to this subchapter may be punished by revocation of any form of pretrial release, by the forfeiture of bail and/or by the issuance of a bench warrant which requires the defendant's arrest or which remands the defendant into custody. Said revocation may, after a hearing, and upon a showing by a clear and convincing evidence in the sound discretion of the court, be made either where the violation complained of has been committed by the defendant personally, or has in any way been caused indirectly or through the encouragement of the defendant. (63 Del. Laws, c. 275, § 3.)

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§ 3537. Pretrial release.

(a) Any pretrial release of any defendant (whether on bail or under any other form of recognizance) shall be deemed, as a matter of law, to include a condition that the defendant neither do, nor cause to be done, nor knowingly permit to be done on his behalf, any act proscribed by this subchapter hereof and any willful violation of said condition is subject to sanction as prescribed in § 3536 of this title whether or not the defendant was the subject of an order under § 3535 of this title.

(b) From and after June 22, 1982, any receipt or any bail or bond given by the clerk of any court, by any surety or bondsman and/or any other form of conditional release shall contain, in a conspicuous location, notice that such bail bond, or other release, is conditioned upon strict adherence to the requirements and prohibitions of this subchapter. (63 Del. Laws, c. 275, § 3.)

§ 6541. Publication of names of inmates on supervised custody or work release.

(a) Upon placing an inmate on supervised custody or work release the Department shall publish the name of that inmate and the crimes for which he is incarcerated. Said information shall be published in each of the 3 counties of this State in a newspaper located in that county and having a general circulation throughout the county. No inmate shall be placed on supervised custody or work release until the notice provided for herein has been released for publication to the newspaper.

(b) In cases of inmates convicted of crimes against persons, including robbery, prior to publication of names, the Department shall notify the victim at the victim's last known place of residence. (64 Del. Laws, c. 200, § 1.)

§ 8307. Disposition of lost or stolen property or money.

(a) Whenever any personal property of any kind, except money, comes into the custody of the State Police and the person entitled to possession of the same cannot be located and fails to claim the same for a period of 1 year, the Superintendent of the State Police may dispose of the same at public sale at some

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place which shall be convenient and accessible to the public, provided that the time, place and terms of said sale, together with a description of said personal property, shall be inserted in 1 or more daily newspapers published in the State at least once each week for 2 successive weeks prior to said sale. The Superintendent shall in his discretion fix the terms of sale and may employ an auctioneer to make the sale. If the personal property be of the kind for which

a certificate of title or registration shall or should have been issued by any commissioner, commission or department, whether state or federal, the Superintendent shall cause notice by registered mail to be sent at least 10 days prior to the sale to the owner and lien holder, if any, shown on the records of such commissioner, commission or department, or to the person entitled to the possession thereof, if his address be known or if it can be ascertained by the exercise of reasonable diligence; and if said address cannot be so ascertained, then such notice shall not be required to be given.

(b) After deducting from the proceeds of the sale the expense of making the same and the amount of storage and any other repair or tow charges incurred during the period in which the same was in custody, and after the payment of all liens to which said property was subject in the order of their priority, the balance remaining, if any, shall be paid into the Police Retirement Fund of the State Police. If the owner or the person entitled to the possession of personal property, sold as aforesaid, shall present to the Superintendent a claim, duly sworn to, at any time within 3 years from the date of such sale, for the balance remaining from the proceeds of such sale, the Superintendent shall cause to be paid from said Police Retirement Fund the amount of such balance, without interest, to such claimant. If no claim for such balance is made within 3 years from the date of such sale, such balance shall become the property of said Police Retirement Fund in the same manner as other sums contributed thereto.

(c) Whenever any lost, abandoned or stolen money comes into the custody of the State Police, the Superintendent of the State Police shall make a reasonable effort to locate the owner thereof. If the owner of any stolen money cannot be located or fails to claim such stolen money within 1 year from the date that it came into the custody of the State Police, such money shall become the property of the State Police Retirement Fund in the same manner as other sums contributed thereto. If the owner of any lost or abandoned money cannot be located or fails to claim such lost or abandoned money within 1 year from the date that it came into the custody of the State Police, such money shall become the property of the person who delivered custody of such money to the State Police and shall be returned by the Superintendent to such person as soon as is practicable.

(d) No action for the recovery of personal property, money or damages arising under this section shall be brought after the expiration of 3 years from the accruing of the cause of such action; provided, however, that this subsection shall not be deemed to constitute a waiver of any immunity from suit to which the Superintendent of State Police may otherwise by law be entitled.

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(e) The certificate of the Superintendent that he has sold any such personal property to a purchaser as provided in this section shall constitute sufficient evidence of title to any property so sold in order to enable any such purchaser to obtain a certificate of title and registration from the appropriate commissioner, commission or department, which shall recognize such certificate of the Superintendent as sufficient authority for the issuance of a certificate of title and registration.

(f) This section shall not apply to any property the disposition of which is provided for elsewhere in this title. (11 Del. C. 1953, § 8307; 50 Del. Laws, c. 239, § 1; 61 Del. Laws, c. 95, §§ 1-3.)

Title 31

CHAPTER 39. ADULT PROTECTIVE SERVICES

- Sec.
3901. Legislative intent.
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3904. Nature of protective services; costs.
3905. Voluntary protective services.

- Sec.
3906. Involuntary protective services.
3907. Probable cause of death or immediate irreparable physical injury.
3908. Emergency order for protective services.
3909. Hearing an petition.
3910. Duty to report.

Revisor's note. — Section 2 of 63 Del. Laws, c. 384, provides: "This act shall be effective upon the appropriation of the General Assembly of sufficient funds for the purposes set forth in this act."

Section 3 of 63 Del. Laws, c. 384, provides: "Funds appropriated for the purposes of this act remaining unexpended on June 30, 1983, shall revert to the General Fund of the State."

Section 4 of 63 Del. Laws, c. 384, provides: "Services set forth in this chapter shall be provided to the extent that funding is appropriated and sufficient for such services."

Section 5 of 63 Del. Laws, c. 384, provides: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable."

Section 6 of 63 Del. Laws, c. 384, provides: "This act shall become effective July 1, 1982."

§ 3901. Legislative intent.

The General Assembly recognizes that many adult citizens of this State are subject to psychological or physical injury or exploitation because of physical or mental infirmity, disease or other causes which render them incapable of providing for their basic daily living needs. The General Assembly, therefore, intends through this chapter to establish a system of services for impaired adults designed to protect their health, safety and welfare. The intent is to authorize only the least possible restrictions on the exercise of personal and civil rights and such restrictions may be permitted only when consistent with proven need for services. (63 Del. Laws, c. 384, § 1.)

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§ 3902. Definitions.

As used in this chapter:

(1) "Infirm adult" shall mean any person 18 years of age or over who, because of physical or mental disability, is substantially impaired in his ability to provide adequately for his own care and custody.

(2) "Physical or mental disability" shall include any physical or mental disability and shall include, but not be limited to, mental retardation, brain damage, physical degeneration, deterioration, senility, disease, habitual drunkenness or addiction to drugs, and mental or physical infirmity.

(3) "Substantially impaired in his ability to provide adequately for his own care and custody" means the infirm person is unable to perform or obtain for himself essential services.

(4) "Essential services" shall refer to those physical, medical, social, psychiatric or legal services necessary to safeguard the person, rights and resources of the infirm person and to maintain his physical and mental well-being. These services shall include, but not be limited to, adequate food and clothing, heated and sanitary shelter, medical care for physical and mental health needs, assistance in personal hygiene, protection from health and safety hazards, protection from physical or mental injury or exploitation.

(5) "Exploitation" means the illegal or improper use or abuse of an infirm person, his resources or his rights, by another person, whether for profit or other advantage.

(6) "Incapacitated person" means a person for whom a guardian of person or property, or both, shall be appointed, under § 3914(a) of Title 12.

(7) "Independent living arrangement" means a mode of life pursued by a person capable of providing for his own care or who, while impaired, nevertheless is able to live outside an institution with assistance in obtaining essential services.

(8) "Hazardous living condition" means a mode of life which contains a substantial risk of physical injury, or mental distress, or exploitation.

(9) "Interested person" means any adult relative or friend of an infirm person; an official or representative of the protective services agency or of any public or nonpublic private agency; or any corporation, board, organization or person designated by the Court to act in the interest of the infirm person.

(10) "Emergency" means that a person is living in conditions which present a substantial risk of serious harm and includes, but is not limited to, problems which cannot be managed by an impaired person, such as insufficient food supply, inadequate shelter, threatened abuse or utility shut-off. Emergency does not mean psychiatric emergency as provided for in Chapter 50 of Title 16.

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- (11) "Emergency services" are protective services furnished to a person in an emergency.
- (12) "Public Guardian" means the Office of the Public Guardian.
- (13) "Protective placement" means the transfer of a person out of an independent living arrangement.
- (14) "Court" means the Court of Chancery of the State.
- (15) "Department" means the Department of Health and Social Services of the State. (63 Del. Laws, c. 384, § 1.)

§ 3903. Establishment of protective services system.

(a) The Secretary of the Department of Health and Social Services shall appoint, within 6 weeks of July 1, 1982, an advisory committee to assist the Department in developing a comprehensive and coordinated system of protective services for infirm and incapacitated adults in the State. The committee shall consist of representatives of the Office of the Public Guardian, the Division of Economic Services, the Division of Aging, the Division of Mental Retardation, the Division of Mental Health, the Division of Public Health, and Senior Citizens Legal Assistance Program and the Governor's Council on Emergency Medical Services. The committee shall also include 3 members from either the medical profession or the general public. The Secretary, with the advice of the committee, shall promulgate rules and regulations for the operation of the adult protective services program.

(b) The Department shall provide those services and activities as described in subsections (b) and (c) of § 3904 of this title according to the regulations promulgated by the Secretary. In doing so, it may contract with other agencies for the provision of services, or it may provide directly any or all of those services.

(c) The Department shall utilize, to the extent possible, those resources of public and private nonprofit agencies which are appropriate and available in providing protective services.

(d) The Department shall designate 5 persons as the initial staff in beginning the delivery of protective services. They shall be as follows:

- (1) One person of at least the social worker III level as the overall supervisor of the protective services program.
- (2) Three persons of at least social worker II level, to function throughout the State.
- (3) One social worker I.

(e) Protective services as provided by this chapter and the regulation promulgated pursuant to it shall be provided by the Department 8 months after July 1, 1982.

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(f) The Department shall make continuing provisions in each county for the shelter of those persons who are determined to be in temporary need of such protection pursuant to §§ 3905, 3906 and 3907 of this title. In providing this service, the Department may utilize existing resources such as state institutions; it may contract for bed space in private facilities; and it may utilize the resources of rest (family care and residential) homes for those clients not requiring medical care.

(g) The Department may also make provisions for securing emergency food, clothing, fuel allotments and funds for those persons determined to be in need of such services, pursuant to §§ 3905, 3906 or 3907 of this title, insofar as such services are not available from other state-supported programs. To the extent that funds are available for this purpose, the Department may draw upon the funds budgeted to provide emergency services as needed and, where possible, reimbursement shall be made to the Department for the services provided which amounts shall revert to the General Fund of the State. (63 Del. Laws, c. 384, § 1.)

§ 3904. Nature of protective services; costs.

(a) Protective services are services furnished to an infirm or incapacitated adult, with the person's consent or pursuant to Court order, to assist that person in performing the activities of daily living, in maintaining independent living arrangements or avoiding hazardous living conditions.

(b) Protective services include, but are not limited to:

- (1) Preliminary investigation and evaluation of reports of adults needing protective services, including a comprehensive social evaluation.
- (2) Medical and psychiatric evaluation, if necessary.
- (3) Social casework for the purpose of planning and providing services needed by the adult client.

(4) Maintenance of the person in his own home through provision of home health care, homemaker services, day care and chore services.

(5) Assistance in obtaining out-of-home services such as respite care, emergency housing and placement in a rest-residential home.

(6) Referral for legal assistance, information on establishing power of attorney or representative payee arrangements and on guardianship of person or property; referral to the Office of Public Guardian; referral for medical assistance.

(7) Transportation to and from service providers, if necessary.

(8) Other services consistent with this chapter.

(c) In order to provide the services listed in subsection (b) of this section, the following services will be performed by the adult protective services unit:

- (1) Informing and educating the citizens of the State on the needs of protective service clients and the services available to them.
- (2) Accepting and processing all referrals on, or applications from, adults in need of protective services.

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- (3) Home visits to all clients, if necessary.
 - (4) Counseling with clients to assist them to accept needed services voluntarily.
 - (5) Referring clients to other service-providing agencies, arranging for visits and following up to determine that needed services were delivered by those agencies.
 - (6) Maintaining case records and statistics.
 - (7) Contracting with existing public and private agencies and professionals for the provision of services not directly provided by the Department.
 - (8) Provision for shelter of those persons in temporary need of such protection, pursuant to § 3903(f) of this title.
 - (9) Provisions for emergency food, clothing, fuel allotments and funds for persons determined to be in need of such services.
 - (10) Arranging for the development of a system, in cooperation with public and private community agencies, to insure that emergencies requiring adult protection services will be handled on a coordinated basis.
- (d) (1) The cost of services provided by the State which are voluntarily accepted by the protective services client shall be borne by the client himself, insofar as he is able to pay for them from his own resources, insurance programs, Medicare, Medicaid or similar programs. The Department shall determine the client's ability to pay for services from a fee schedule and income criteria which shall be established by the Secretary under the rulemaking authority provided by this chapter. For a client aggrieved by a decision regarding fees, a caseworker's determination may be appealed to the program administrator.
- (2) In the event that services are voluntarily accepted and no payment is made by a client whose resources are adequate for such payment, the State may take action in the Court of Chancery to obtain reimbursement, provided that efforts have been made to collect the account through other means.
- (3) Where protective services are provided under Court order, the Court may authorize reasonable payment to the Department from the resources of the person if the Department can prove to the satisfaction of the Court that payment may be made without endangering the welfare or interests of the person served.
- (4) To the extent that funds are available, the cost of protective services not paid from the resources of the client shall be debited to the adult protective services budget. (63 Del. Laws, c. 384, § 1.)

§ 3905. Voluntary protective services.

- (a) Any qualified person may receive adult protective services, provided the person requests or affirmatively consents to receive these services. If the person withdraws or refuses consent, the service shall not be provided unless by Court order.

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- (b) No person shall interfere with the provision of protective services to a person who requests or consents to receive such services or who has been ordered by Court to be provided with such services. In the event that interference occurs on a continuing basis, the Department or the service recipient may petition the Court to enjoin such interference. (63 Del. Laws, c. 384, § 1.)

§ 3906. Involuntary protective services.

If a person lacks the capacity to consent to receive protective services, these services may only be given in 1 or more of the following ways:

- (1) By a police officer, on probable cause of death or immediate and irreparable physical injury, pursuant to § 3907 of this title.
- (2) By the Attorney General or a Deputy Attorney General of this State, pursuant to § 3907 of this title.
- (3) By an emergency order of the Court, pursuant to § 3908 of this title. The Court shall order only that intervention which it finds to be the least restrictive of the person's liberty and rights, while consistent with his welfare and safety. The basis for such order and finding shall be stated in the opinion by the Court.
- (4) By the appointment of a guardian pursuant to § 3914 of Title 12.
- (5) By a social service worker on probable cause of death or immediate and irreparable physical injury pursuant to § 3907 of this title. (63 Del. Laws, c. 384, § 1.)

§ 3907. Probable cause of death or immediate and irreparable physical injury.

- (a) When probable cause exists to make a peace officer believe that a person will suffer immediate and irreparable physical injury or death if not immediately placed in a health care facility or other emergency shelter and that the person is incapable of giving consent, the peace officer may transport the person to an appropriate medical facility or emergency shelter.
- (b) The peace officer shall immediately or at the beginning of the next working day notify the Department of such transfer and of the circumstances which necessitated it and any other relevant information.

- (c) The adult protective services unit shall investigate, and if involuntary protective services are needed on a continuing basis for a person so transported, proceedings shall be initiated for supplying such services pursuant to § 3908 of this title or pursuant to § 3914 of Title 12. (63 Del. Laws, c. 384, § 1.)

§ 3908. Emergency order for protective services.

- (a) Upon petition by the Public Guardian or adult protective services unit of the Department of Health and Social Services, the Court of Chancery may issue an order authorizing the provision of protective services on an emergency basis to an adult person after finding on the record, based on a preponderance of the evidence that:

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- (1) The person is infirm or incapacitated, as defined in subdivisions (1) and (6) of § 3902 of this title;
 - (2) An emergency exists, as defined in subdivision (10) of § 3902 of this title;
 - (3) The person lacks the capacity to consent to receive protective services;
 - (4) No person authorized by law or Court order to give consent for the person is available and willing to consent to emergency services; and
 - (5) There are compelling reasons for ordering services.
- (b) In an emergency order, the Court is to consider:
- (1) Only such protective services as are necessary to remove the conditions creating the emergency shall be ordered; and the Court shall specifically designate the approved services in its order.
 - (2) Protective services authorized by an emergency order shall not include hospitalization or change of residence unless the Court specifically finds such action is necessary and gives specific approval for such action in its order.
 - (3) Protective services may be provided through an emergency order only for 1 week period upon a showing to the Court that continuation of the original order is necessary to remove the emergency.
 - (4) In its order, the Court shall appoint the petitioner or another interested person other than the service provider as temporary guardian of the person of the infirm. The temporary guardian shall assume responsibility for the person's welfare and be granted therein authority to give consent for the person for the approved protective services until the expiration of the order.
 - (5) The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the person of any rights except to the extent validly provided for in the order of appointment.
 - (6) To implement an emergency order, the Court may authorize forcible entry of the premises of the person for the purpose of rendering protective services or transporting the person to another location for such services. Such forcible entry may be authorized only after a showing to the Court that attempts to gain voluntary access to the premises have failed and forcible entry is necessary. The order of the Court shall include an order to the appropriate police department authorizing forcible entry.
- (c) The petition for an emergency order shall set forth to the best of the petitioner's knowledge and belief:
- (1) The name, address and interest of the petitioner;
 - (2) The name, address and approximate age of the person in need of protective services;
 - (3) If the information can be obtained and if any exist, the names and addresses of the spouse and next of kin of the person;
 - (4) The petitioner's attempts to contact the persons named in paragraph (3) of this subsection and their responses to the situation;

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- (2) The infirm person has the right to counsel whether or not he is present at the hearing. If the person is indigent or lacks the capacity to waive counsel, the Court shall appoint counsel. Where the person is indigent, the Court shall assess reasonable attorney's fees, such as are customarily charged by attorneys in this State for comparable services. To the extent that funding for this purpose is budgeted and available, such funds shall be drawn from the budget for adult protective services upon an order directing payment signed by the Court.
- (3) The infirm person has the right at his own expense or, if indigent, at the expense of the State, to secure an independent medical and/or psychological examination relevant to the issue involved in any hearing under this section, and to have presented a report of this independent evaluation or to have the Court hear the evaluator's personal testimony as to his condition and circumstances as a part of the evidence presented in his behalf at the hearing. The infirm person shall have the right to have witnesses and evidence subpoenaed in his behalf and to have presented at the hearing such witnesses and evidence in support of his position as he desires.
- (b) The Court shall record a statement of its findings in support of any order for emergency protective services. (63 Del. Laws, c. 384, § 1.)

§ 3910. Duty to report.

- (a) Any person having reasonable cause to believe that an adult person is infirm or incapacitated as defined in § 3902 of this title shall report such information to the Department of Health and Social Services.
- (b) Upon receipt of a report, the Department shall make a prompt and thorough evaluation to determine whether the person named is in need of protective services and what services are needed, unless the Department determines that the report is frivolous or is without a factual basis. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. If outside professional assistance is required in order for a caseworker to complete an evaluation, the Department may contract with professionals in order to provide such services. (63 Del. Laws, c. 384, § 1.)

§ 3911. Adult under treatment by spiritual means not abused, infirm or incapacitated.

Nothing in this chapter shall be construed to mean an adult is abused, infirm or incapacitated or in need of protective services for the sole reason he relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall anything in this chapter be construed to authorize or require any medical care or treatment over the implied or express objections of said person. (64 Del. Laws, c. 103, § 1.)

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(5) The petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in paragraphs (1) through (4) of subsection (a) of this section;

(6) Facts showing petitioner's attempts to obtain the person's consent to the services and the outcomes of such attempts; and

(7) The proposed protection services.

(d) Actual notice of the filing of such petition, and other relevant information including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, shall be given to the person, and at the Court's discretion, to his spouse, or if none, to his adult children, next of kin or guardian if any. Notice to any parties other than the person in need of services may be waived by the Court if the petition avers with specificity that such notice would be detrimental to the infirm person. Such notice shall be given in language reasonably understandable by their intended recipients at least 24 hours prior to the hearing for emergency intervention, and longer if possible.

(e) Upon the filing of a petition for an emergency order for protective services, the Court shall hold a hearing within 7 days or immediately, if necessary, pursuant to § 3909 of this title.

(f) If the person continues to need protective services after the order and renewal provided for in paragraph (3) of subsection (b) of this section has expired, such services can only be rendered pursuant to the appointment of a guardian.

(g) The petitioner or other witness supplying information shall be immune from civil liability for damages as a result of filing the petition if he acted in good faith and believed the person to be in need of such assistance.

(h) The authority of the police departments of this State to transfer a person to a mental health facility in cases of a psychiatric emergency are not affected by this chapter. (63 Del. Laws, c. 384, § 1.)

§ 3909. Hearing on petition.

(a) The hearing on a petition for involuntary protective services shall be held under the following conditions:

(1) The person needing protective services shall be present unless he has knowingly and voluntarily waived the right to be present or unless, because of physical or mental incapacity, he cannot be present without endangering his welfare. Waiver or incapacity may not be presumed from nonappearance but shall be determined on the basis of factual information supplied to the Court by counsel or a caseworker.

Category	Citation
1. Victim Compensation Program	3-401 et seq.
1.1 Responsible Agency	3-409, 3-410
1.2 Eligible Claimants	3-402
1.3 Losses Covered	3-401(5), 3-403(b)
1.4 Minimum and Maximum Award	3-402(a)(4), 3-403(b)
1.5 Required to Show Financial Need	3-403(c)
1.6 Required to Report Crime - Time Limit	3-402(a)(1)
1.7 Filing of Claim - Time Limit	3-402(a)(2)
1.8 Emergency Award	3-404
1.9 Funding	3-413
2. Restitution	
2.1 Sentencing Option	16-711(a)
2.2 Mandatory Condition of Probation	16-711(a)
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	15-714
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	22-722
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
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11. Victim-Witness Assistance	
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11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	22-3901
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	16-1001 et seq.
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	3-412(c) (compensation program records)
15.4 Sexual Assault Counselor Privilege	

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District of Columbia Code

Title 3

CHAPTER 4. COMPENSATION OF VICTIMS OF VIOLENT CRIME.

Sec.

3-401. Definitions.

3-402. Eligibility.

3-403. Awards of compensation.

3-404. Emergency awards.

3-405. Attorney's fees.

3-406. Preservation of civil actions; subrogation.

3-407. Waiver of rights void; award exempt from execution or attachment.

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3-408. False claims.

3-409. Administration; annual report to Council.

3-410. Duties and powers of Mayor.

3-411. Procedure.

3-412. Judicial review.

3-413. Crime Victims' Compensation Fund.

3-414. Costs.

3-415. Appropriations.

§ 3-401. Definitions.

For the purposes of this chapter the term:

(1) "Claimant" means any person who claims for compensation under this chapter and who is:

(A) A victim;

(B) A surviving dependent of a deceased victim; or

(C) A person who is responsible for the maintenance and support of a victim and who incurs expenses on behalf of the victim for economic loss incurred as a result of the injury or death of the victim. The term "claimant" shall not include a collateral source.

(2) "Collateral source" means a source of benefits or compensation received by or available to a claimant on account of economic loss which results

directly or indirectly from a crime of violence and which is otherwise compensable under this chapter. Collateral source includes, but is not limited to, payment or benefits from:

(A) The offender;

(B) The United States, the District of Columbia, a state or territory of the United States or any of its political subdivisions, or any agency of the foregoing, including, but not limited to, Social Security, Medicare, Medicaid, workers' compensation, and public employees' disability compensation;

(C) Wage continuation programs of any employer; or

(D) Any contract of life, health, disability, liability, or fire and casualty insurance, and any contract providing prepaid health benefits.

(3) "Crime of violence" or "crime" means any of the following or an attempt to commit any of the following offenses: Arson, assault, forcible sodomy, kidnapping, maliciously disfiguring another, manslaughter, murder, mayhem, rape, riot, robbery, sodomy of a child less than 16 years of age, and unlawful use of explosives. The term "crime of violence" or "crime" shall include any of the preceding list of offenses notwithstanding that the offender lacked capacity to commit the crime by reason of infancy, insanity, intoxication, or otherwise. The term "crime of violence" or "crime" shall not include the

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operation of an automobile, boat, aircraft, or other vehicle that results in injury or death unless the injury or death was intentionally inflicted through use of such automobile, boat, aircraft, or vehicle.

(4) "Dependent" means any person who is a survivor of a victim and who depended upon the victim for more than one-half of his or her support at the time of the commission of the crime upon which the claim is based.

(5) "Economic loss" means:

(A) For a victim or person responsible for the maintenance of a victim as described in paragraph (1) (C) of this section:

(i) All actual and reasonable expenses fairly incurred for ambulance, hospital, surgical, nursing, dental, prosthetic, and other medical and related professional services and devices relating to physical or psychiatric care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by District of Columbia law;

(ii) All actual and reasonable expenses fairly incurred for physical and occupational therapy and rehabilitation; and

(iii) Loss of net income; and

(B) For a dependent or person responsible for the maintenance of a victim as described in paragraph (1) (C) of this section:

(i) Actual expenses of the victim's funeral and burial but not to the extent that the expenses exceed \$2,000;

(ii) Loss of the victim's support;

(iii) Loss of the victim's services, including housekeeping and child care services; and

(iv) All actual and reasonable expenses incurred for medical treatment (including ambulance, hospital, surgical, nursing, and other medical and professional services and devices) of the victim prior to his or her death which results from a crime of violence.

The term "economic loss" shall not include pain and suffering.

(6) "Mayor" means the Mayor of the District of Columbia or the Mayor's designated agent.

(7) "Victim" means any person, except a law enforcement or fire officer engaged in performance of his or her duties, who is killed or injured in the District of Columbia:

(A) As a result of a crime of violence;

(B) While assisting lawfully to apprehend a person reasonably suspected of having committed or attempted a crime of violence;

(C) While assisting a person against whom a crime of violence has been committed or attempted, provided that the assistance was rendered in a reasonable manner; or

(D) While attempting to prevent the commission of a crime of violence.

The term "victim" shall not include any person who committed or aided in the commission of the crime upon which a claim is based or who was injured or killed as an indirect result of his or her participation in an unlawful and criminal activity. (Apr. 6, 1982, D.C. Law 4-100, § 2, 29 DCR 969.)

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Legislative history of Law 4-100. — Law 4-100 was introduced in Council and assigned Bill No. 4-361, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 26, 1982, and February 9, 1982, respectively. Signed by the Mayor on February 22, 1982, it was assigned Act No. 4-158 and transmitted to both Houses of Congress for its review.

Short title. — The first section of D.C. Law 4-100 provided: "That this act may be cited as the 'Victims of Violent Crime Compensation Act of 1981'."

Severability of Law 4-100. — Section 17 of D.C. Law 4-100 provided that if any portion of the act is held invalid for any reason by a court of competent jurisdiction, such portion shall be deemed to be a separate, distinct, and independent provision, and such holding shall not affect the validity of any remaining provisions.

Application of Law 4-100. — Section 18 of D.C. Law 4-100 provided that claims for compensation may be initiated under the act for economic loss sustained as the result of crimes of violence committed after September 30, 1982.

§ 3-402. Eligibility.

(a) Except as provided in subsection (b) of this section, a claimant is eligible for compensation under this chapter subject to the following conditions:

(1) The crime of violence upon which the claim is based was reported to the Metropolitan Police Department not more than 7 days after it occurred, except that this requirement may be waived for good cause shown.

(2) The claimant files a claim on a form supplied by the Mayor and submits all information and documents as may be required, within 180 days after the crime occurred, except that this time limit may be extended for good cause shown.

(3) The claimant was, at the time of the commission of the crime upon which the claim is based, either:

(A) A resident of the District of Columbia; or

(B) A resident of a state or territory that provides compensation to residents of the District of Columbia who are killed or injured in that state or territory as a result of a crime of violence.

(4) The claimant has suffered economic loss in an amount exceeding \$100 as a result of the crime of violence upon which the claim is based.

(5) The offender will not be unjustly enriched by an award of compensation to the claimant, except that this requirement may be waived in cases involving extraordinary circumstances where the interests of justice so require.

(b) A claimant shall not be eligible for compensation under this chapter if the claimant committed or aided in the commission of the crime upon which the claim is based. (Apr. 6, 1982, D.C. Law 4-100, § 3, 29 DCR 969.)

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§ 3-403. Awards of compensation.

(a) *Limitation.* — Claims shall be processed and maintained in the order of their filing, but no final award of compensation shall be made unless the Crime Victims' Compensation Fund contains sufficient monies to pay the award.

(b) *Amount.* — Subject to the provisions of subsection (c) of this section, the amount of compensation awarded shall be equal to the amount of the claimant's economic loss, decreased by all amounts received by or available to the claimant from collateral sources. No compensation shall be awarded under this chapter in an amount exceeding \$25,000.

(c) *Reduction or denial.* — (1) An award of compensation shall be denied if it is determined that the claimant will not suffer undue financial hardship if not granted financial assistance pursuant to this chapter. A claimant suffers undue financial hardship if the claimant cannot maintain the customary level of health, safety, and education for himself or herself or his or her dependents. In determining whether the claimant will suffer undue financial hardship, all relevant factors shall be taken into consideration, including, but not limited to: (A) The number of the claimant's dependents; (B) the usual and ordinary living expenses of the claimant and the claimant's dependents; (C) any special needs of the claimant and the claimant's dependents; (D) the claimant's income and potential earning capacity; and (E) the claimant's resources. If the claimant is 65 years of age or older, the value of the claimant's house and any savings up to an amount of \$10,000 shall not be taken into consideration in determining whether the claimant will suffer undue financial hardship.

(2) An award of compensation may be reduced, reconsidered, or denied because of misconduct of the victim or claimant that contributed to the crime or the amount of economic loss.

(3) An award of compensation may be reduced, reconsidered, or denied if the victim or claimant has not reasonably cooperated with law enforcement officials to apprehend and prosecute the offender, except that refusal of a victim or claimant to testify against the offender may be excused if testifying would subject the victim or claimant to a substantial risk of serious physical or emotional injury. It is not necessary that an offender either be apprehended or convicted in order for compensation to be awarded under this chapter.

(d) *Manner of payment.* — (1) Compensation awarded under this chapter may be paid in lump sum or in installments.

(2) Payments for allowable expenses may be paid directly to a service provider.

(3) If there are 2 or more claimants entitled to an award of compensation as a result of the death or injury of a victim, the award shall be apportioned among the claimants. (Apr. 6, 1982, D.C. Law 4-100, § 4, 29 DCR 969.)

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§ 3-404. Emergency awards.

If it appears likely that a final award will be made and that the claimant will suffer undue hardship if immediate financial assistance is not granted, an emergency award in an amount not to exceed \$1,000 may be made prior to a final determination on a claim. The amount of the emergency award shall be deducted from the final award or repaid by the claimant if it is determined that no compensation will be awarded. (Apr. 6, 1982, D.C. Law 4-100, § 5, 29 DCR 969.)

§ 3-405. Attorney's fees.

(a) In addition to the amount of compensation awarded to a successful claimant, a reasonable fee may be awarded to the claimant's attorney for services rendered in connection with any claim under this chapter. The fee may not exceed 10 percentum of the amount of the claimant's award or \$1,000, whichever is less.

(b) Except for necessary costs, an attorney shall not charge, demand, receive, or collect any fee for services rendered in connection with any claim under this chapter in an amount larger than permitted by this section. (Apr. 6, 1982, D.C. Law 4-100, § 6; 29 DCR 969.)

§ 3-406. Preservation of civil actions; subrogation.

(a) Nothing in this chapter shall deprive the claimant or the claimant's successors in interest of the right to recover damages or restitution from the offender.

(b) The District of Columbia shall be subrogated to the claimant's right against the offender to the extent of any compensation awarded under this chapter. The District of Columbia may initiate a suit against the offender for damages or restitution. The District of Columbia shall be notified by the plaintiff of the institution of any suit against the offender for damages or restitution and may intervene in such suit. The District of Columbia shall have a lien on any recovery made from such suit. All monies recovered through such subrogation shall be deposited in the District of Columbia Treasury to the credit of the Crime Victims' Compensation Fund. (Apr. 6, 1982, D.C. Law 4-100; § 7, 29 DCR 969.)

§ 3-407. Waiver of rights void; award exempt from execution or attachment.

Any agreement by a person to waive, release, or commute his or her rights under this chapter is void. Compensation awarded under this chapter is exempt from execution, attachment, or other remedy for recovery or collection of debt, except for expenses resulting from injury or death which is the basis for the claim. (Apr. 6, 1982, D.C. Law 4-100, § 8, 29 DCR 969.)

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§ 3-408. False claims.

Any person who knowingly submits false information in support of a claim under this chapter or knowingly suppresses relevant information concerning a claim under this chapter shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$2,000 or imprisoned for not more than 1 year, or both. A person convicted of an offense under this section shall forfeit any compensation under this chapter and shall reimburse and repay to the District of Columbia any compensation received pursuant to this chapter. (Apr. 6, 1982, D.C. Law 4-100, § 9, 29 DCR 969.)

Section reference. — This section is referred to in § 3-413.

Legislative history of Law 4-100. — See note to § 3-401.

Severability of Law 4-100. — See note to § 3-401.

Application of Law 4-100. — See note to § 3-401.

§ 3-409. Administration; annual report to Council.

(a) The Mayor shall administer the provisions of this chapter, and shall issue such rules as may be necessary to carry out the provisions and purposes of this chapter.

(b) The Mayor shall report annually to the Council of the District of Columbia on the status and activities of the victims' compensation program. The report shall include, but is not limited to, the following information: Total number of claims filed, the number of claims approved and the amount of each award, the number of claims denied, the number of contested cases, the number of cases in which the claimant was represented by an attorney, the cumulative total of attorneys' fees paid, the number of cases pending, and the future liability of the Crime Victims' Compensation Fund. (Apr. 6, 1982, D.C. Law 4-100, § 10, 29 DCR 969.)

Legislative history of Law 4-100. — See note to § 3-401.

Severability of Law 4-100. — See note to § 3-401.

Application of Law 4-100. — See note to § 3-401.

§ 3-410. Duties and powers of Mayor.

The Mayor shall:

(1) Investigate claims filed pursuant to this chapter and request from any agency or department of the District of Columbia government such information, data, and assistance as will enable the Mayor to determine if, in fact, a crime was committed or attempted and the extent, if any, to which the victim or claimant was responsible for his or her injury or death.

(2) Determine all claims filed pursuant to this chapter and reinvestigate or reopen cases as deemed necessary.

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(3) Conduct hearings as provided in § 3-411 (b); administer oaths or affirmations; examine any witnesses; issue subpoenas to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence; and take or cause to be taken depositions or affidavits.

(4) Require and direct medical examination of victims if deemed necessary.

(5) Do all things in conformity with the law which may be necessary to discharge the administration of this chapter effectively. (Apr. 6, 1982, D.C. Law 4-100, § 11, 29 DCR 969.)

Legislative history of Law 4-100. — See note to § 3-401.

Application of Law 4-100. — See note to § 3-401.

Severability of Law 4-100. — See note to § 3-401.

§ 3-411. Procedure.

(a) *Filing.* — (1) A claim shall be initiated when the claimant timely submits to the Mayor a completed claim form under oath or affirmation.

(2) Each claim shall be accompanied by a filing fee of \$5, which shall be deposited to the credit of the Crime Victims' Compensation Fund. The filing fee may be waived or reduced for good cause shown.

(3) Claims may be filed in person or by mail.

(4) A claim may be filed by a person eligible for compensation as provided in § 3-402, or if such person is a minor or legally incompetent, by his or her parent, guardian, or personal representative.

(b) *Determination of claim.* — (1) Upon receipt of a claim, the Mayor shall examine all written information submitted by the claimant and other such documentary evidence. The Mayor may require from the claimant such additional information and shall conduct such investigation as is necessary to enable the Mayor to determine whether the claimant is eligible for compensation, and the amount, if any, of compensation to be awarded.

(2) The Mayor shall make a preliminary determination of the claimant's eligibility and the amount, if any, of compensation to be awarded. A notice of the preliminary determination shall be sent to the claimant by first class mail. The notice shall also include the date, time, and place of a hearing to be held not less than 14 days after the notice is mailed. If the claimant chooses to forego the hearing, the preliminary determination shall be made final. If new evidence is obtained which would change the determination, the determination may be modified. If the determination is modified, notice of the revised determination and notice of hearing shall be mailed to the claimant. If the claimant chooses to forego the hearing or does not appear, the modified determination shall be made final.

(3) If the claimant chooses to contest the preliminary or modified determination, the case shall be determined by the Mayor in accordance with § 1-1509 (contested cases).

(4) The claimant may agree in writing to a final determination at any time.

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(5) The claimant shall be given written notice of the final determination of the claim. If the final determination was made pursuant to a hearing, the notice shall state findings of fact and conclusions of law.

(6) A case may be reopened at any time if new evidence reveals that the claimant was not eligible, was guilty of misconduct that contributed to the crime or to the economic loss, knowingly provided false information, or suppressed relevant information concerning a claim.

(c) *Confidentiality.* — The record of a hearing conducted pursuant to subsection (b) (3) of this section shall be a public record. However, any record or report obtained by the Mayor, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation. (Apr. 6, 1982, D.C. Law 4-100, § 12, 29 DCR 969.)

Section references. — This section is referred to in §§ 3-410 and 3-413. **Severability of Law 4-100.** — See note to § 3-401.
Legislative history of Law 4-100. — See note to § 3-401. **Application of Law 4-100.** — See note to § 3-401.

§ 3-412. Judicial review.

A final determination by the Mayor under this chapter may be appealed to the District of Columbia Court of Appeals in accordance with § 1-1510. (Apr. 6, 1982, D.C. Law 4-100, § 13, 29 DCR 969.)

§ 3-413. Crime Victims' Compensation Fund.

(a) A fund is established in the District of Columbia, to be known as the Crime Victims' Compensation Fund ("Fund"), for the purpose of accounting for the financial operations of this chapter. The Fund shall be classified by the Mayor pursuant to § 47-375. The Fund shall be administered by the Mayor.

(b) All compensation and attorneys' fees awarded under §§ 3-403, 3-404, and 3-405 shall be paid from and be subject to the availability of monies in the Fund. All administrative costs necessary to carry out this chapter shall be borne by the General Fund.

(c) The monies in the Fund shall consist of, and there shall be deposited in the District Treasury to the credit of the Fund, any appropriations to the funds under § 3-415, monies recovered through subrogation under § 3-406, repayments under §§ 3-404 and 3-408, costs imposed under § 3-414, filing fees under § 3-411, and monies received from the federal government or any other public or private source for the purposes of the Fund. Monies in the Fund may be invested by the Mayor in accordance with § 47-342. (Apr. 6, 1982, D.C. Law 4-100, § 14, 29 DCR 969.)

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§ 3-414. Costs.

In addition to and separate from any punishment imposed, a cost of at least \$20 and not more than \$500 for each felony charge, and a cost of \$10 for each misdemeanor charge, shall be imposed upon each person convicted of or pleading guilty or nolo contendere to such charge in the Superior Court of the District of Columbia ("Court"). The amount of costs assessed under this section for felonies shall be determined by the courts on the basis of the estimated severity of the injury or loss caused by the crime. The decision of the Court regarding costs shall be final. If at the time of conviction or plea any such person is indigent, as determined by the Court, and is later employed for wages, salary or other compensation while released on probation or parole, or is incarcerated in any facility of the Department of Corrections and is paid wages for work performed therein, the amount of the cost shall be paid from such wages, salary or other compensation. All such costs shall be payable to the District of Columbia Treasurer for deposit to the credit of the Crime Victims' Compensation Fund. (Apr. 6, 1982, D.C. Law 4-100, § 15, 29 DCR 969.)

§ 3-415. Appropriations.

Funds are authorized to be appropriated as necessary to carry out the purposes of this chapter. (Apr. 6, 1982, D.C. Law 4-100, § 16, 29 DCR 969.)

Section reference. — This section is referred to in § 3-413. **Severability of Law 4-100.** — See note to § 3-401.
Legislative history of Law 4-100. — See note to § 3-401. **Application of Law 4-100.** — See note to § 3-401.

* * *

§ 16-711. Restitution or reparation.

(a) In criminal cases in the Superior Court, the court may, in addition to any other sentence imposed as a condition of probation or as a sentence itself, require a person convicted of any offense to make reasonable restitution or reparation.

(b) When restitution or reparation is ordered, the court shall take into consideration the number of victims, the actual damage of each victim, the resources of the defendant, the defendant's ability to earn, any obligation of the defendant to support dependents, and other matters as pertain to the defendant's ability to make restitution or reparation.

(c) The court shall fix the manner of performing restitution or reparation.

(d) At any time during the probation period or period of restitution or reparation, the defendant may request and the court may grant a hearing on any matter related to the plan of restitution or reparation. (Mar. 10, 1983, D.C. Law 4-202, § 2, 30 DCR 173.)

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§ 15-714. Witness fees for attendance in Superior Court.

(a) The fees and travel allowances to be paid any witness attending in a criminal case in the Superior Court of the District of Columbia shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia.

(b) The fees and travel allowances to be paid any witness compelled by subpoena to attend any branch of the Superior Court of the District of Columbia other than the criminal division shall be the same amount as paid a witness compelled to attend before the United States District Court for the District of Columbia.

(c) No travel allowance shall be paid to any witness residing within the District of Columbia. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; Dec. 27, 1967, 81 Stat. 742, Pub. L. 90-226, title VIII, § 803(a); July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(15)(A); 1973 Ed., § 15-714.)

Cross references. — As to per diem and mileage fees for witnesses in United States courts, see 28 U.S.C. § 1821 et seq. As to fees of jurors serving in Superior Court, see § 11-1906. **Section reference.** — This section is referred to in § 11-1527.

* * *

§ 22-722. Prohibited acts; penalty.

(a) A person commits the offense of obstruction of justice if that person:

(1) Corruptly, or by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court of the District of Columbia in the discharge of his or her duties;

(2) Corruptly, by threats or force, in any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any court of the District of Columbia;

(3) Wilfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats of force, to obstruct, delay, or prevent the communication to an investigator of the District of Columbia by any person of information relating to a violation of any criminal statute in effect in the District of Columbia;

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(4) Injures any person or his or her property on account of the person or any other person giving to a criminal investigator in the course of any criminal investigation information related to a violation of any criminal statute in effect in the District of Columbia; or

(5) Injures any person or his or her property on account of the person or any other person performing his official duty as a juror, witness, or officer in any court in the District of Columbia.

(b) Any person convicted of obstruction of justice shall be fined not more than \$1,000 or imprisoned for not more than 3 years, or both. (Dec. 1, 1982, D.C. Law 4-164, § 502, 29 DCR 3976.)

Cross reference. — As to bribery of witness, see § 22-713.

Legislative history of Law 4-164. — See note to § 22-3801.

Application of Law 4-164. — See note to § 22-711.

* * *

§ 4-157. Same — Return of property — General requirements; multiple claimants; immunity; property needed as evidence; notice to owner; disposition upon failure to claim.

(a) Upon satisfactory evidence of the ownership of property or money described in § 4-156 he shall deliver the same to the owner, his next of kin, or legal representative and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the Property Clerk may deliver such property or money to any person having a duly executed power of attorney from such owner, or his next of kin, or legal representative, upon the filing of such power of attorney in the office of said Clerk and the signing of a receipt for such property or money.

(b) In the event 2 or more persons claim ownership of any such property or money, the Property Clerk may give notice by registered mail to all such claimants of whom he shall have knowledge of the time and place of a hearing to determine the person to whom the property or money shall be delivered. At the time and place so designated the Property Clerk shall hear and receive evidence of ownership of the property or money concerned, and shall determine the identity of the owner. After such hearing, the Property Clerk shall deliver the property or money to the person whom the Property Clerk determines is the owner, his next of kin, or legal representative, and to him or them only. If, in any case, it is proven impracticable for such owner, next of kin, or legal representative to appear, the Property Clerk may deliver such property or money

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to any person having a duly executed power of attorney from such owner, his next of kin, or legal representative, upon the filing of such power of attorney in the office of said Clerk and the signing of a receipt for such property or money.

(c) The Property Clerk shall not be liable in damages for any official action performed hereunder in good faith.

(d) Except as provided in §§ 4-165, 4-166 and 4-167 hereof, no property or money in the possession of the Property Clerk alleged to have been feloniously obtained or to be the proceeds of crime shall be delivered under this section if it is required to be held under the provisions of § 4-159 hereof; nor shall it be delivered within 1 year after the date of receipt of said property or money by the Property Clerk unless the United States Attorney in and for the District of Columbia shall certify that such property or money is not needed as evidence in the prosecution of a crime.

(e) Whenever the owner of property in the custody of the Property Clerk has been notified by the Property Clerk, by registered or certified mail, to take possession of such property within 30 days after the date of mailing of such notification, and such owner fails so to do within such period, such property shall be thereafter treated as other unclaimed, abandoned, or lost property and shall be disposed of as provided in § 4-161: Provided, that if, in the opinion of the Property Clerk, such property has no salable value, and if within 30 days after the date of mailing such notification such property is not reclaimed by its owner and removed by him from the custody of the Property Clerk, such property shall be disposed of by destruction or otherwise, as the Council of the District of Columbia by regulation or order shall provide. (R.S., D.C., § 413; May 9, 1941, 55 Stat. 185, ch. 99, § 1; June 29, 1953, 67 Stat. 101, ch. 159, § 306(a); Sept. 25, 1962, 76 Stat. 589, Pub. L. 87-691, § 1; 1973 Ed., § 4-158.)

* * *

§ 4-165. Property delivered to owner preceding trial — Generally.

When animals or articles of property (except perishable property) other than money, returned to the Property Clerk as the proceeds of crime, are shown by sufficient evidence to be necessary for the current use of the owner and not for sale, the Mayor of the District of Columbia has power, in his discretion, to authorize the Property Clerk to place the same in the custody of the owner, upon sufficient bonds being given by the owner in the sum of twice the value of the property, conditioned for the production of the same at any time within 1 year, when required for use in court as evidence in any proceedings thereon. (R.S., D.C., § 420; June 11, 1878, 20 Stat. 107, ch. 180, § 6; 1973 Ed., § 4-163.)

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§ 4-168. Use of property as evidence.

If any property or money placed in the custody of the Property Clerk shall be desired as evidence in the Superior Court of the District of Columbia, such property shall be delivered to any officer who shall present an order to that effect from such Court; but such property shall not be retained in the Court, but shall be returned to the Property Clerk, to be disposed of according to the provisions of this chapter. (R.S., D.C., § 423; 1973 Ed., § 4-166.)

Section references. — This section is referred to in §§ 4-152, 4-170 and 4-212.

Reference in text. — The Police Court of the District of Columbia and the Municipal Court for the District of Columbia were consolidated by the Act of April 1, 1942, 56 Stat. 190, ch. 270, § 1. The Act of July 8, 1963, § 1, substituted

"District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". The Act of July 29, 1970, Pub. L. 91-353, § 155(a), substituted "Superior Court of the District of Columbia" for "District of Columbia Court of General Sessions".

* * *

CHAPTER 39. CRIMES COMMITTED AGAINST SENIOR CITIZEN VICTIMS.

Sec.

22-3901. Enhanced penalty.

§ 22-3901. Enhanced penalty.

(a) Any person who commits any offense listed in subsection (b) of this section against an individual who is 60 years of age or older, at the time of the offense, may be punished by a fine of up to 1½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1½ times the maximum term of imprisonment otherwise authorized for the offense, or both.

(b) The provisions of subsection (a) of this section shall apply to the following offenses: Robbery, attempted robbery, theft, attempted theft, extortion, fraud in the 1st degree, and fraud in the 2nd degree.

(c) It is an affirmative defense that the accused knew or reasonably believed that the victim was not 60 years of age or older at the time of the offense. (Dec. 1, 1982, D.C. Law 4-164, § 201, 29 DCR 3976.)

Cross references. — As to robbery, see § 22-2901. As to attempt to commit robbery, see § 22-2902. As to theft, see § 22-3811. As to fraud, see § 22-3821. As to extortion, see § 22-3851.

Legislative history of Law 4-164. — See note to § 22-3801.

Short title. — The first section of D.C. Law 4-164 provided: "That this act may be cited as the 'District of Columbia Theft and White Collar Crimes Act of 1982'."

Application of Law 4-164. — See note to § 22-711.

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CHAPTER 10. PROCEEDINGS REGARDING INTRAFAMILY OFFENSES.

Sec.	Sec.
16-1001. Definitions.	16-1004. Petition; notice; temporary order.
16-1002. Complaint of criminal conduct; referrals to Family Division.	16-1005. Hearing; evidence; protection order.
16-1003. Petition for civil protection.	16-1006. Dismissal of petition; notice.

§ 16-1001. Definitions.

For purposes of this chapter:

(1) The term "complainant" means an individual in the relationship described in paragraph (5) who is the victim of an intrafamily offense and who files or for whom is filed a petition for protection under this chapter.

(2) The term "Director of Social Services" means the Director of Social Services in the Superior Court of the District of Columbia.

(3) The term "Family Division" means the Family Division of the Superior Court of the District of Columbia.

(4) The term "family member" includes any individual in the relationship described in paragraph (5).

(5) The term "intrafamily offense" means an act punishable as a criminal offense committed by an offender upon a person:

(A) to whom the offender is related by blood, legal custody, marriage, having a child in common, or with whom the offender shares or has shared, within the last year, a mutual residence; and

(B) with whom the offender maintains or maintained an intimate relationship rendering the application of this chapter appropriate.

(6) The term "respondent" means any person who is accused of having committed an intrafamily offense in a petition for protection filed under this chapter. (July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1001; Sept. 14, 1982, D.C. Law 4-144, § 2, 29 DCR 3131.)

Effect of amendment. — D.C. Law 4-144 divided the provisions of former paragraph (2) into present paragraphs (1) and (4) and rewrote them, redesignated former paragraph (4) as present paragraph (2), redesignated former paragraph (1) as present paragraph (5) and rewrote it, and added paragraph (6).

Legislative history of Law 4-144. — Law

4-144 was introduced in Council and assigned Bill No. 4-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-212 and transmitted to both Houses of Congress for its review.

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§ 16-1002. Complaint of criminal conduct; referrals to Family Division.

(b) The United States attorney may also (1) file a criminal charge based upon the conduct and may consult with the Director of Social Services concerning appropriate recommendations for conditions of release taking into account the intrafamily nature of the offense; or (2) refer the matter to the Corporation Counsel for the filing of a petition for civil protection in the Family Division. Prior to any such referral, the United States attorney shall consult with the Director of Social Services concerning the appropriateness of the referral.

(c) The institution of criminal charges by the United States attorney shall be in addition to, and shall not affect the rights of the complainant to seek any other relief under this chapter. Testimony of the respondent in any civil proceedings under this chapter and the fruits of that testimony shall be inadmissible as evidence in a criminal trial except in a prosecution for perjury or false statement. (July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1002; Sept. 14, 1982, D.C. Law 4-144, § 3, 29 DCR 3131.)

Effect of amendment. — D.C. Law 4-144 Legislative history of Law 4-144. — See deleted the last sentence in subsection (b) and note to § 16-1001. added subsection (c).

§ 16-1003. Petition for civil protection.

(a) Upon referral by the United States attorney, or upon application of any person or agency for a civil protection order with respect to an intrafamily offense committed or threatened, the Corporation Counsel may file a petition for civil protection in the Family Division. In the alternative to referral to the Corporation Counsel, a complainant on his or her own initiative may file a petition for civil protection in the Family Division.

(c) Whenever a petition is filed by a complainant at his or her initiative or whenever private counsel enters an appearance in a case originally petitioned by the Corporation Counsel, the complainant or his or her counsel shall promptly notify the Corporation Counsel regarding the filing or entry of appearance. (July 29, 1970, 84 Stat. 546, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1003; Sept. 14, 1982, D.C. Law 4-144, § 4, 29 DCR 3131.)

Effect of amendment. — D.C. Law 4-144 Legislative history of Law 4-144. — See added the last sentence in subsection (a) and note to § 16-1001. added subsection (c).

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§ 16-1004. Petition; notice; temporary order.

(a) Upon a filing of a petition for civil protection by the Corporation Counsel or by a complainant, the Family Division shall set the matter for hearing, consolidating it, where appropriate, with other matters before the Family Division involving members of the same family.

(b) With respect to a petition for civil protection filed by the Corporation Counsel, the Family Division shall cause notice of the hearing to be served on the respondent, the complainant and, if appropriate, the family member endangered (or, if a child, the person then having physical custody of the child), the Director of Social Services, and the Corporation Counsel. The respondent shall be served with a copy of the petition together with the notice and shall be directed to appear at the hearing. The Family Division may also cause notice to be served on other members of the family whose presence at the hearing is necessary to the proper disposition of the matter.

(c) With respect to a petition for civil protection filed by a complainant himself or herself, the complainant, pursuant to the Rules of the Superior Court of the District of Columbia, shall cause notice of the hearing and a copy of the petition to be served upon the respondent and any other members of the family whose presence at the hearing is necessary to the proper disposition of the matter. Pursuant to the Rules of the Superior Court of the District of Columbia, the complainant shall also cause a subpoena to issue directing the respondent to appear at the hearing.

(d) If, upon the filing of a petition under oath, the Division finds that the safety or welfare of a family member is immediately endangered by the respondent, it may, ex parte, issue a temporary protection order of not more than 14 days duration and direct that the order be served along with the notice required by this section: Provided, that a petition for civil protection be filed together with the petition for a temporary protection order and a hearing be commenced on the petition for civil protection prior to the expiration of the temporary protection order. (July 29, 1970, 84 Stat. 547, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1004; Sept. 14, 1982, D.C. Law 4-144, § 5, 29 DCR 3131.)

Effect of amendment. — D.C. Law 4-144 inserted "or by a complainant" in subsection (a), added "with respect to a petition for civil protection filed by the Corporation Counsel" at the beginning of subsection (b), redesignated former subsection (c) as present subsection (d)

and substituted "a petition under oath" for "the petition" and "14" for "10" and added the proviso in that subsection, and inserted present subsection (c).

Legislative history of Law 4-144. — See note to § 16-1001.

§ 16-1005. Hearing; evidence; protection order.

(a) Members of the family receiving notice shall appear at the hearing. In addition to the parties, the Corporation Counsel and the Director of Social Services may present evidence at the hearing in cases where the petition was filed by the Corporation Counsel.

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(c) If, after hearing, the Family Division finds that there is good cause to believe the respondent has committed or is threatening an intrafamily offense, it may issue a protection order —

(4) directing a respondent to refrain from entering or to vacate the dwelling unit of the complainant when the dwelling is (A) marital property of the parties; or (B) jointly owned, leased, or rented and occupied by both parties: Provided, that joint occupancy shall not be required if a party is forced by the respondent to relinquish occupancy; or (C) owned, leased, or rented by the complainant individually; or (D) jointly owned, leased, or rented by the complainant and a person other than the respondent;

(5) directing the respondent to relinquish possession or use of certain personal property owned jointly by the parties or by the complainant individually;

(6) awarding temporary custody of a minor child of the parties;

(7) providing for visitation rights with appropriate restrictions to protect the safety of the complainant;

(8) awarding costs and attorney fees;

(9) ordering the Metropolitan Police Department to take such action as the Family Division deems necessary to enforce its orders;

(10) directing the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter; or

(11) combining two or more of the directions or requirements prescribed by the preceding paragraphs.

(Sept. 14, 1982, D.C. Law 4-144, § 6, 29 DCR 3131.)

Section references.

This section is referred to in § 4-136.

Effect of amendment. — D.C. Law 4-144 added "in cases where the petition was filed by the Corporation Counsel" at the end of the second sentence of subsection (a) and redesignated

former paragraphs (4) and (5) of subsection (c) as present paragraphs (10) and (11) and inserted present paragraphs (4) through (9).
Legislative history of Law 4-144. — See note to § 16-1001.

§ 16-1006. Dismissal of petition; notice.

The Family Division may dismiss a petition if the matter is not appropriate for disposition in the Family Division. (July 29, 1970, 84 Stat. 548, Pub. L. 91-358, title I, § 131(a); 1973 Ed., § 16-1006; Sept. 14, 1982, D.C. Law 4-144, § 7, 29 DCR 3131.)

Effect of amendment. — D.C. Law 4-144 deleted the designation "(a)" at the beginning of the section and deleted subsection (b).

Legislative history of Law 4-144. — See note to § 16-1001.

Category	Citation
1. Victim Compensation Program	960.01 et seq.
1.1 Responsible Agency	960.03(2), 960.05, 960.06
1.2 Eligible Claimants	960.04
1.3 Losses Covered	960.03(8)
1.4 Minimum and Maximum Award	960.13(3), 960.13(8)
1.5 Required to Show Financial Need	960.13(7)
1.6 Required to Report Crime - Time Limit	960.13(1)(b)
1.7 Filing of Claim - Time Limit	960.07(2)
1.8 Emergency Award	960.12
1.9 Funding	316.660(3); 775.0835; 960.17, 960.20 et seq.
2. Restitution	
2.1 Sentencing Option	775.089; 921.187(9); 947.181
2.2 Mandatory Condition of Probation	948.03(1)(g)
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	775.089(5); 944.514, 945.091 (by employed inmates); 945.30; 948.01(4),(5),(6) (by offender in community control prog.)
3. Escrow and Forfeiture of Offender Profits	944.512
4. Witness Fees	92.142
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	918.14
6.2 Protective Orders	See, 907.041(4)(b)(2) (basis for pretrial detention)
7. Victim Notification	
7.1 of Compensation Program	960.23, 960.24(1)
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	921.143

Category	Citation
8.3 Testimony at Sentencing Hearing	921.143
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	812.061
11. Victim-Witness Assistance	
11.1 Ombudsmen	43.35 (witness coordinating office); 960.245 (bureau of crime comp. to be advocates)
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	943.405 (prevention of crimes against the elderly)
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	827.09(15)(c),(d)
12.3 Abuse, Neglect, Exploitation - Reporting	827.09(3)
12.4 Abuse, Neglect, Exploitation - Protective Services	827.09(7)
13. Sexual Assault Victims	
13.1 Payment for Medical Services	960.28; see, 395.0201
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	918.16
13.4 Child Sexual Assault Victim - Admissible Depositions	918.17
14. Domestic Violence	
14.1 Protective Orders	741.30
14.2 Domestic Violence Shelters	741.01; 409.601 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	827.09(10) (abused adults); 943.405(4),(5)(a), (elderly and other victims)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	960.06(1)(c), 960.28(3)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	409.606 (spouse abuse information); 960.15 (records of compensation prog.)
15.4 Sexual Assault Counselor Privilege	90.5035

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Florida Statutes Annotated

CHAPTER 960. VICTIMS OF CRIMES [NEW]

Sec.		Sec.	
960.01	Short title.	960.15	Records.
960.02	Declaration of policy and legislative intent.	960.16	Subrogation.
960.03	Definitions.	960.17	Award constitutes debt owed to state.
960.04	Eligibility for awards.	960.18	Penalty for fraud.
960.05	Bureau of Crimes Compensation.	960.19	Repealed.
960.06	Division of Workers' Compensation; powers and duties.	960.20	Additional costs.
960.07	Filing of claims for compensation.	960.21	Crimes Compensation Trust Fund.
960.08	Repealed.	960.22	Application for federal funds.
960.09	Determination of claims.	960.23	Notice of provisions of this chapter.
960.10	Repealed.	960.24	Duties and functions of the department.
960.11	Repealed.	960.25	Surcharge on fines and bail bonds.
960.12	Emergency awards.	960.28	Payment for victims' initial examinations.
960.13	Awards.		
960.14	Manner of payment; execution or attachment.		

Laws 1977, c. 77-452, which added the Florida Crimes Compensation Act, as contained in Fla.St.1977, chapter 960, provided in section 8 thereof that the law take effect January 1, 1978, with the exception of provisions which have been designated as §§ 960.17, 960.20, 960.21, and 960.25, which took effect June 30, 1977.

Law Review Commentaries
Concern renewed for victim, Eric Smith, 62 Fla.Bar J. 16 (1978).

960.01 Short title.

The provisions of this chapter shall be known and may be cited as the "Florida Crimes Compensation Act."

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978.

1. Construction and application.

Establishment of trust fund prior to January 1, 1978, did not in any way require retroactive application of act creating this chapter allowing compensation for crime victims, nor did § 960.07 requiring claims to be filed not later than one year from occurrence of crime on which claim was based require such result, and claims arising out of crimes committed prior to January 1, 1978, were not compensable. Taylor v. Florida Crimes Compensation Commission, App., 367 So.2d 720 (1979).

The Florida Crimes Compensation Act is not made retroactive by the one-year limitation on filing claims for awards under § 960.07(2), and does not permit disbursements of funds from the crimes compensation trust fund in payment of claims for awards arising out of incidences or occurrences of crimes committed prior to the act's effective date. Op.Atty.Gen., 078-22, Feb. 21, 1978.

960.02 Declaration of policy and legislative intent

The Legislature recognizes that many innocent persons suffer personal injury or death as a direct result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer disabilities, incur financial hardships, or become dependent upon public assistance. The Legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the intent of the Legislature that aid, care, and support be provided by the state, as a matter of moral responsibility, for such victims of crime. It is the express intent of the Legislature that all state departments and agencies cooperate with the Department of Labor and Employment Security in carrying out the provisions of this chapter.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1980, c. 80-146, § 2, eff. July 1, 1980.

Laws 1980, c. 80-146, § 2, changed the department name in the last sentence from "health and rehabilitative services" to "labor and employment security".

Library References
Criminal Law §1220.
C.J.S. Criminal Law § 2007.

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As used in this chapter, unless the context otherwise requires, the term:

- (1) "Claimant" means any person filing a claim pursuant to this chapter.
- (2) "Division" means the Division of Workers' Compensation of the Department of Labor and Employment Security.
- (3) "Crime" means the commission by any person of a felony or misdemeanor under the laws of this state, which is punishable under the criminal laws of this state and which results in physical injury to or death of a resident of this state. However, no act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death shall constitute a crime for the purpose of this chapter unless the injury or death was intentionally inflicted through the use of such vehicle, boat, or aircraft, or unless such vehicle, boat, or aircraft is an implement of a crime to which this act applies.
- (4) "Department" means the Department of Labor and Employment Security.
- (5) "Deputy commissioner" means a deputy commissioner appointed under s. 440.45.
- (6) "Intervenor" means any person who goes to the aid of another and suffers bodily injury or death as a direct result of acting, not recklessly, to prevent the commission of a crime, to lawfully apprehend a person reasonably suspected of having committed a crime, or to aid the victim of a crime.
- (7) "Victim" means any person who suffers personal physical injury or death as a direct result of a crime.
- (8) "Out-of-pocket loss" means unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care, or other treatment rendered in accordance with a religious method of healing or for other services necessary as a result of the injury or death upon which such claim is based.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1980, c. 80-146, § 3, eff. July 1, 1980; Laws 1981, c. 81-259, § 507, eff. Aug. 4, 1981.

Laws 1980, c. 80-146, § 3, redefined "division" and "department", and added the definition of "deputy commissioner".

Laws 1981, c. 81-259, a reviser's correction bill prepared pursuant to § 11.242, amended subsec. (5) of this section by substituting "appointed under" for "created by", and added subsec. (8). See Reviser's Note—1981.

Reviser's Note—1981:

Section 960.03 is amended to improve clarity and facilitate correct interpretation. The repeal of s. 960.08 and the reenactment of its provisions in s. 960.03(8) serve to transfer the definition provided by s. 960.08 to the section containing definitions for terms used in ch. 960. Although s. 960.08 does not state for what purpose the term "out-of-pocket loss" is defined, the apparent intent of ch. 77-452, Laws of Florida, which enacted ch. 960, including ss. 960.03 and 960.08, is that it is for purposes of ch. 960.

Library References
Words and Phrases (Perm.Ed.)

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960.04 Eligibility for awards

(1) Except as provided in subsection (2), the following persons shall be eligible for awards pursuant to this chapter:

- (a) A victim.
- (b) An intervenor.
- (c) A surviving spouse, parent, or child of a deceased victim or intervenor.

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(d) Any other person who is dependent for his principal support upon a deceased victim or intervenor.

(e) A dependent child of a deceased victim of a crime who is related to or residing in the same household as the person who committed the crime.

(2) Any person who:

(a) Committed or aided in the commission of the crime upon which the claim was based;

(b) Was engaged in an unlawful activity at the time of the crime upon which the claim is based;

(c) Is related within the third degree of consanguinity or affinity to the person who committed the crime, except as provided in paragraph (1)(e);

(d) Is maintaining a sexual relationship with the person who committed the crime; or

(e) Resides in the same household as the person who committed the crime, except as provided in paragraph (1)(e), shall not be eligible to receive an award with respect to such claim.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1979, c. 79-297, § 1, eff. June 29, 1979; Laws 1980, c. 80-146, § 4, eff. July 1, 1980.

Laws 1979, c. 79-297, § 1, added subsec. (1)(e), and added "except as provided in subsection (1)(e)" at the end of par. (c) and within par. (e) of subsec. (2).

Section 2 of Laws 1979, c. 79-297 provides:

"This act shall extend to any child who would have been eligible for an award under the provisions of this act after December 31, 1977."

Laws 1980, c. 80-146, § 4, substituted "chapter" for "section" preceding par. (a) to subsec. (1).

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960.05 Bureau of Crimes Compensation

There is hereby created within the Division of Workers' Compensation of the Department of Labor and Employment Security a Bureau of Crimes Compensation, which shall be the organizational unit through which the division exercise its duties and responsibilities pursuant to this chapter.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1980, c. 80-146, § 5, eff. July 1, 1980.

Laws 1980, c. 80-146, § 5, deleted provisions pertaining to the crimes compensation "commission" and provided for the "bureau" in lieu thereof.

Section 1 of Laws 1980, c. 80-146, provides:

"There is created within the Division of Workers' Compensation of the Department of Labor and Employment Security a Bureau of Crimes Compensation. The Crimes Compensation Commission, established and created by s. 960.05, Florida Statutes, is hereby abolished and its program, activity, and function is hereby transferred by a type four transfer, pursuant to s. 20.06(4), Florida Statutes, from the Department of Health and Rehabilitative Services Crimes Compensation Commission to the Division of Workers' Compensation of the Department of Labor and Employment Security; provided, however, that the offices of the Crimes Compensation

Commissioner and Crimes Compensation Commission chairman are hereby abolished.

"(1) No legal or administrative proceeding pending as of the effective date of this act shall be abated because of any assignment made in this act, but the unit of the Bureau of Crimes Compensation, Division of Workers' Compensation of the Department of Labor and Employment Security, to which the function relating to the pending proceeding is reassigned shall be substituted as a party in interest in such proceedings.

"(2) If any agency, program, activity, or function assigned is changed in name or substance by another act of the Legislature during the 1980 regular session, the agency, program, activity or function, as amended, is assigned in a manner consistent with the intent expressed by this act."

960.06 Division of Workers' Compensation; powers and duties

(1) The division shall have the power and duty:

(a) To establish and maintain an office in Tallahassee and to prescribe the duties of the employees of the Bureau of Crimes Compensation.

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(b) To adopt, promulgate, amend, and rescind such rules as are necessary to carry out the provisions of this chapter.

(c) To request from the state attorney or from the law enforcement agencies involved such investigation and data as will enable the division to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury or death.

(d) To investigate all claims for awards filed with the division pursuant to this chapter, considering all other available programs providing valid and collectible benefits to the claimant, and to reinvestigate or reopen cases as the division deems appropriate and equitable.

(e) To require the submission of such medical records as are required and, when necessary, to direct medical examination of the victim or intervenor.

(f) To render, prior to January 1 of each year, to the Governor, to the Secretary of Labor and Employment Security, and to the presiding officers of the Senate and House of Representatives a written report of its activities.

(g) To authorize other units within the division to assist in the investigation of claims filed under this chapter.

(2) The department shall provide the division with legal representation relative to its duties and responsibilities under this chapter.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1979, c. 79-400, § 306, eff. Aug. 5, 1979; Laws 1980, c. 80-146, § 6, eff. July 1, 1980; Laws 1981, c. 81-259, § 506, eff. Aug. 4, 1981.

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla.St.1977 to additions, substitutions, and deletions editorially supplied therein in order to remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

Laws 1980, c. 80-146, § 6, rewrote this section to provide for division powers in lieu of those formerly exercised by the commission.

Laws 1981, c. 81-259, a reviser's correction bill prepared pursuant to § 11.242, amended subsec. (1)(a) of this

section by inserting the bureau name. See Reviser's Note—1981.

Reviser's Note—1981: Amended to clarify the reference to "bureau," enacted by s. 6, ch. 80-146, Laws of Florida. See ss. 1 and 5 of ch. 80-146, which created the Bureau of Crimes Compensation within the Division of Workers' Compensation of the Department of Labor and Employment Security by transferring the function of the Crimes Compensation Commission from the Department of Health and Rehabilitative Services.

960.07 Filing of claims for compensation

(1) A claim for compensation may be filed by a person eligible for compensation as provided in s. 960.04 or, if such person is a minor, by his parent or guardian or, if the person entitled to make a claim is mentally incompetent, by his guardian or such other individual authorized to administer his estate.

(2) A claim must be filed not later than 1 year after the occurrence of the crime upon which the claim is based or not later than 1 year after the death of the victim or intervenor. However, for good cause the division may extend the time for filing for a period not exceeding 2 years after such occurrence.

(3) Claims may be filed in the Tallahassee office of the division in person or by mail or with the department in person. Any employee of the department receiving a claim for compensation shall, immediately upon receipt of such claim, mail the claim to the division at its office in Tallahassee. In no event and under no circumstances shall the rights of a claimant under this chapter be prejudiced or lost by the failure or delay of the employees of the department in mailing claims to the division in Tallahassee.

(4) Upon filing of a claim pursuant to this chapter, the division shall promptly notify the state attorney of the circuit wherein the crime is alleged to have occurred. If within 10 days after such notification such state attorney advises the division that a criminal prosecution is pending upon the same alleged crime and requests that action by the division be deferred, the division shall defer all proceedings under this chapter until such time as a trial verdict has been rendered, and shall so notify such state attorney and claimant. When a trial verdict has been rendered, such state attorney shall promptly notify the division. Nothing in this subsection shall limit the authority of the division to grant emergency awards pursuant to s. 960.12.

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(5) The state attorney's office shall aid claimants in the filing and processing of claims, as may be required.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1980, c. 80-146, § 7, eff. July 1, 1980.

Laws 1980, c. 80-146, § 7, substituted references to "division" for "commission" in subsecs. (2) to (4), and substituted at the end of subsec. (4) reference to § 960.12 for § 897.12.

1. Construction and application
Defendant was not entitled to cross-examine battery victim regarding whether victim had a pending claim under the Florida Crimes Compensation Act; existence or nonexistence of such a claim was irrelevant to an issue at trial and legislature did not intend that the Act be used as a means of attacking the credibility of victims who testify. *Lyons v. State*, App., 384 So.2d 982 (1980).

Establishment of trust fund prior to January 1, 1978, did not in any way require retroactive application of act creating this chapter allowing compensa-

tion for crime victims, nor did this section requiring claims to be filed not later than one year from occurrence of crime on which claim was based require such result, and claims arising out of crimes committed prior to January 1, 1978, were not compensable. *Taylor v. Florida Crimes Compensation Commission*, App., 367 So.2d 720 (1979).

The Florida Crimes Compensation Act, is not made retroactive by the one-year limitation on filing claims for awards under subsec. (2) of this section, and does not permit disbursements of funds from the crimes compensation trust fund in payment of claims for awards arising out of incidences or occurrences of crimes committed prior to the act's effective date. *Op. Atty. Gen.*, 078-22, Feb. 21, 1978.

960.08 Repealed by Laws 1981, c. 81-259, § 507, eff. Aug. 4, 1981

Repealed § 960.08, which defined "out-of-pocket loss" was derived by Laws 1977, c. 77-452, § 1, and Laws 1980, c. 80-146, § 8. See, now, § 960.03(8).

960.09 Determination of claims

(1) The division shall have authority to allow, deny, controvert, and litigate claims made against it and to delegate to the Chief of the Bureau of Crimes Compensation such authority.

(2) The action of the division or bureau in allowing, denying, or controverting a claim shall be exempt from the provisions of chapter 120.

(3) If the division or bureau denies or controverts the claim, the right to reimbursement under this chapter shall be barred unless an application for a hearing thereon is filed with the division or bureau at its office in Tallahassee within 60 days after notice to the claimant of such denial or controversion. When such application for a hearing is filed in a timely manner, the claim shall be heard and determined in accordance with the procedure prescribed in s. 440.25, to the extent that it is applicable, and in accordance with the workers' compensation rules of procedure, except that an appeal from an order of a deputy commissioner allowing or denying a claim under this chapter shall be to the district court of appeal in the district in which the hearing was conducted or one of the parties resides. Adjudications, before deputy commissioners, of cases arising under this chapter shall be exempt from chapter 120.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1979, c. 79-400, § 307, eff. Aug. 5, 1979; Laws 1980, c. 80-146, § 9, eff. July 1, 1980.

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla. St. 1977 to additions, substitutions, and deletions editorially supplied therein in order to remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

Laws 1980, c. 80-146, § 9, rewrote this section.

960.10, 960.11 Repealed by Laws 1980, c. 80-146, § 21, eff. July 1, 1980

Repealed §§ 960.10 and 960.11; derived from Laws 1977, c. 77-452, § 1; pertained to determination of the claims by the commission and to judicial review of such decisions, respectively.

960.12 Emergency awards

Notwithstanding the provisions of s. 960.07, if it appears to the division that such claim is one with respect to which an award probably will be made, and that either the claimant is a recipient of benefits under the Federal Social Security Act or undue hardship will result to the claimant if immediate payment is not made, the division may make an emergency award to the claimant, pending a final decision in the case, on the following conditions:

(1) The amount of such emergency award shall not exceed \$500;

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(2) The amount of such emergency award shall be deducted from any final award made to the claimant; and

(3) The amount of such emergency award which is in excess of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the division.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1978, c. 78-44, § 1, eff. May 17, 1978; Laws 1980, c. 80-146, § 10, eff. July 1, 1980.

Laws 1978, c. 78-44, inserted in the first sentence "either the claimant is a recipient of benefits under the Federal Social Security Act or that" 960.09, if it appears to the commission member to whom the claim is assigned, prior to taking action upon such claim," and, deleted elsewhere references to "division" for "commission" or "commission member".

960.13 Awards

(1)(a) No award shall be made unless the division finds that:

1. A crime was committed;

2. Such crime directly resulted in personal injury to, or death of, the victim or intervenor; and

3. Such crime was promptly reported to the proper authorities.

(b) In no case may an award be made when the record shows that such report was made more than 72 hours after the occurrence of such crime unless the division, for good cause shown, finds the delay to have been justified. The division, upon finding that any claimant or award recipient has not duly cooperated with all law enforcement agencies, may deny, reduce, or withdraw any award, as the case may be.

(2) Any award shall be granted on an "actual need" basis and shall be provided subsequent to all benefits provided by primary insurance carriers, including, but not limited to, health and accident insurers, workers' compensation, and automobile accident coverage.

(3) Any award made pursuant to this chapter shall be made in accordance with the schedule of benefits and degrees of disability specified in s. 440.15, excluding subsection (5) of that section. If a claimant does not have "average weekly wages" so as to qualify under the formula in s. 440.15, the award shall be in an amount equal to the arithmetical average between the maximum and minimum awards listed in the applicable portions of ss. 440.15 and 440.12.

(4) If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned among the claimants.

(5) Any award made pursuant to this chapter shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury or death:

(a) From or on behalf of the person who committed the crime.

(b) From any other public or private source, including an award of workers' compensation pursuant to chapter 440.

(c) From an emergency award under s. 960.12.

(6) In determining the amount of an award, the division shall determine whether, because of his conduct, the victim of such crime or the intervenor contributed to the infliction of his injury or to his death, and the division shall reduce the amount of the award or reject the claim altogether, in accordance with such determination. However, the division may disregard for this purpose the contribution of the intervenor to his own injury or death when the record shows that such contribution was attributed to efforts by an intervenor as set forth in s. 960.03(6).

(7) If the division finds that the claimant, if not granted assistance pursuant to this chapter to meet the loss of earnings or support or out-of-pocket loss, will not suffer serious financial hardship as a result of the loss of earnings or support and the out-of-pocket loss incurred as a result of the injury, the division shall deny the award. In determining serious financial hardship, the division shall consider all the financial resources of the claimant. Unless

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a total dependency is established, members of a family are considered to be partially dependent upon a homemaker with whom they reside, without regard to actual earnings.

(8) No claimant shall receive an award in excess of \$10,000.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1979, c. 79-40, § 122, eff. July 1, 1979; Laws 1979, c. 79-400, § 308, eff. Aug. 5, 1979; Laws 1980, c. 80-146, § 11, eff. July 1, 1980.

Laws 1979, c. 79-40, which redesignated the Workmen's Compensation Law as the Workers' Compensation Law, modified in subsecs. (2) and (5)(b) reference to the law in conformance therewith.

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla.St.1977 to additions, substitutions, and deletions editorially supplied therein in order to remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

Laws 1980, c. 80-146, § 11, substituted references to "division" for "commission" or "commission member" throughout the section.

victims of violent crimes was clearly consistent with standards embodied in similar public benefit laws and it was manifestly rational in relation to objective of relieving demands on taxpayer-funded assistance programs, and thus do not violate equal protection guarantees. State v. Champe, 373 So.2d 874 (1978).

2. In general

Since all rights under Crimes Compensation Act are statutory, including provision for award to applicant of attorney fees, applicant who was injured prior to repeal of § 960.19 was not entitled to an award of attorney fees, because the award would have occurred after the date of repeal, and because applicant had no vested cause of action against the state for any recovery other than that which the Act would allow. Bureau of Crimes Compensation, Dept. of Labor and Employment Sec. v. Williams, App., 405 So.2d 747 (1981).

Costs of depositions may not be awarded as part of crimes compensation benefits. State, Dept. of Labor and Employment Sec. v. Cade, App., 400 So. 2d 171 (1981).

Index to Notes

In general 2.

Validity 1.

1. Validity

"Actual need" provision of this section limiting compensation to be given

960.14 Manner of payment; execution or attachment

(1) Any award made under this chapter shall be in accordance with the discretion and direction of the division as to the manner of payment. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury or death which is the basis for the claim. In every case providing for compensation to a claimant under this chapter, the division may, if in its opinion the facts and circumstances of the case warrant it, convert the compensation to be paid into a partial or total lump sum without discount. All medical bills shall be paid by the division directly to affected health care providers.

(2) The division may reconsider a claim at any time and modify or rescind previous orders for compensation, based upon a change in medical circumstances of a victim or intervenor.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1979, c. 79-400, § 309, eff. Aug. 5, 1979; Laws 1980, c. 80-146, § 12, eff. July 1, 1980.

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla.St.1977 to additions, substitutions, and deletions editorially supplied therein in order to remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

Laws 1980, c. 80-146, § 12, substituted references throughout the section to "division" for "commission", added the fourth sentence to subsec. (1), and substituted at the end of subsec. (2) "medical circumstances of a victim or intervenor" for "financial circumstances of a victim or intervenor, or one or more of the surviving dependents of either".

960.15 Records

Any record or report obtained by the division or a deputy commissioner, the confidentiality of which is protected by any other law or regulation, shall remain confidential, subject to such law or regulation.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1980, c. 80-146, § 13, eff. July 1, 1980.

Laws 1980, c. 80-146, § 13, rewrote this section.

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Payment of an award pursuant to this chapter shall subrogate the state, to the extent of such payment, to any right of action accruing to the claimant or to the victim or intervenor to recover losses resulting from the crime with respect to which the award is made.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978.

960.17 Award constitutes debt owed to state

(1) Any payment of benefits to, or on behalf of, a victim or other claimant under this chapter creates a debt due and owing to the state by any person found, in either a civil or criminal court proceeding in which he is a party, to have committed such criminal act.

(2) The court, when placing on probation as provided in chapter 948 any person who owes a debt to the state as a consequence of a criminal act, may set as a condition of probation the payment of the debt to the state. The court may also set the schedule or amounts of payments subject to modification based on change of circumstances.

(3) The Parole and Probation Commission shall have the right to make payment of the debt to the state a condition of parole under chapter 947, subject to modification based on change of circumstances.

(4) Payments authorized under this section are to be paid to the Crimes Compensation Trust Fund.

Laws 1977, c. 77-452, § 1, eff. June 30, 1977. Amended by Laws 1979, c. 79-400, § 310, eff. Aug. 5, 1979.

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla.St.1977 to additions, substitutions, and deletions editorially supplied therein in order to

remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

960.18 Penalty for fraud

Any person who procures compensation under this chapter by any fraud, or any person who counsels another person to procure compensation under this chapter by any fraud, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any moneys so procured shall be recoverable by the division, including punitive damages and costs of such action plus interest.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1980, c. 80-146, § 14, eff. July 1, 1980.

Laws 1980, c. 80-146, § 14, substituted in the second sentence "division, including punitive damages and costs of such action plus interest" for "commission,

including punitive damages, costs of such action plus interest, and any attorney's fees paid by the commission".

960.20 Additional costs.--When any person pleads

guilty or nolo contendere to, or is convicted of, any felony, misdemeanor, or criminal traffic offense under the laws of this state, or the violation of any municipal or county ordinance which adopts by reference any misdemeanor under state law, there shall be imposed as an additional cost in the case, in addition and prior to any other cost required to be imposed by law, the sum of \$15 \$10. The clerk of the court shall collect and forward \$14 \$9 of each \$15 \$10 collected to

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the Treasurer, to be deposited in the Crimes Compensation Trust Fund. The clerk shall retain the remaining \$1 of each \$15 fee collected as a service charge of the clerk's office. Under no condition shall a political subdivision be held liable for the payment of this sum of \$15 fee.

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla.St.1977 to additions, substitutions, and deletions editorially supplied therein in order to remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

Laws 1980, c. 80-146, § 15, substantially rewrote provisions as contained in the second and third sentences.

Laws 1982, c. 82-222, § 1, made the section applicable to criminal traffic offenses.

Index to Notes

In general 2
Validity 1

1. Validity

Since "costs" need not be expenses incident to case prosecution, additional "cost" of \$10 to be imposed in any criminal prosecution resulting in plea of guilty or nolo contendere, or in conviction, for purpose of providing funds for compensation of violent crime victims could properly be "cost" and was not illegal tax. State v. Champe, 373 So.2d 874 (1978).

Enactment of this section and § 960.25 providing additional "cost" of \$10 to be imposed in any criminal prosecution resulting in plea of guilty or nolo contendere, or in conviction and that five percent surcharge be added to any fine or civil penalty prescribed by law were valid exercises of police power. Id.

Even though this section and § 960.25 classified violent and nonviolent offenders together, it was not irrational for

Legislature to combine all lawbreakers, for purpose of remedying consequences of violent crime in this section and § 960.25 providing that additional "cost" of \$10 be imposed in any criminal prosecution resulting in plea of guilty or nolo contendere, or in conviction and that five percent surcharge be added to any fine or civil penalty prescribed by law, and thus such statutes do not violate equal protection guarantees. Id.

The additional costs specified in this section, and surcharges on criminal fines as specified in § 960.25 pertaining to surcharges on fines, and bail bonds, are not applicable to a defendant who pleads guilty, nolo contendere to, or is convicted of any traffic offense which under Florida law is a criminal misdemeanor, but is being prosecuted as a violation of a municipal ordinance adopting by reference the provisions of the Florida Uniform Traffic Control Law (§ 316.001 et seq.) since violations of such municipal ordinances are neither felonies nor misdemeanors "punishable under the criminal laws of this state." Op.Atty.Gen. 081-80, Oct. 19, 1981.

2. In general

There is no constitutional impediment against merely taxing costs against an indigent defendant upon conviction. Griggs v. State, App., 416 So.2d 1270 (1982).

The costs provided for in § 943.25 pertaining to an advanced training program for police officers, and this section pertaining to costs imposed in criminal proceedings, are not subject to the 5% surcharge established and created by § 960.25 pertaining to surcharges on fines, civil penalties, and bail bonds. Op. Atty.Gen. 080-2, Jan. 8, 1980.

960.21 Crimes Compensation Trust Fund

(1) There is created a special fund, to be known as the Crimes Compensation Trust Fund, for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the division and the payment of claims. The division shall administer the Crimes Compensation Trust Fund.

(2) The moneys placed in the Crimes Compensation Trust Fund shall consist of all moneys appropriated by the Legislature for the purpose of compensating the victims of crime and other claimants under this act, and of moneys recovered on behalf of the division by subrogation or other action, recovered through restitution, received from the Federal Government, received from additional court costs, received from fines, or received from any other public or private source.

(3) All administrative costs of this chapter shall be paid out of moneys collected pursuant to this chapter and deposited in the Crimes Compensation Trust Fund.

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Laws 1977, c. 77-452, §§ 1, 7. Amended by Laws 1979, c. 79-400, § 312, eff. Aug. 5, 1979; Laws 1980, c. 80-146, § 16, eff. July 1, 1980.

Laws 1977, c. 77-452, § 8, provides that the provisions as added by the legislature comprising subsecs. (1) and (2) of this section take effect June 30, 1977; however, the provision contained in subsec. (3), derived from Laws 1977, c. 77-452, § 7, is effective January 1, 1978.

Laws 1979, c. 79-400, a reviser's bill, conformed the sections of Fla.St.1977 to additions, substitutions, and deletions editorially supplied therein in order to remove inconsistencies, redundancies, unnecessary repetition and otherwise clarify the statutes and facilitate their correct interpretation.

Laws 1980, c. 80-146, § 16, substituted in subsecs. (1) and (2) references to "division" for "commission".

1. In general
Where surcharge imposed on bail bond did not fund administration of bail bonding process, but rather funded crimes compensation commission, and all defendants, guilty or innocent, were required to pay surcharge, with ultimate effect of imposing pretrial costs upon every defendant rather than posttrial penalty upon those actually found guilty, surcharge was unconstitutional in that it was unrelated to bail's purpose of assuring accused's attendance at trial, did not benefit operation of bail bond system, and resulted in unjustified expense to innocent defendants. LaRue v. State, 397 So.2d 1136 (1981).

Establishment of trust fund prior to January 1, 1978, did not in any way require retroactive application of act creating this chapter allowing compensation for crime victims, nor did § 960.07 requiring claims to be filed not later than one year from occurrence of crime on which claim was based require such result, and claims arising out of crimes committed prior to January 1, 1978, were not compensable. Taylor v. Florida Crimes Compensation Commission, App., 367 So.2d 720 (1979).

960.22 Application for federal funds

The division is authorized to apply for funds from, and to submit all necessary forms to, any federal agency participating in a cooperative program to compensate victims of crime.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1980, c. 80-146, § 17, eff. July 1, 1980.

Laws 1980, c. 80-146, § 17, substituted "division" for "commission".

960.23 Notice of provisions of this chapter

It shall be the duty of every hospital licensed under the laws of this state to display prominently in the lobby or waiting area of its emergency room posters giving notification of the existence and general provisions of this chapter. The Department of Labor and Employment Security shall provide posters, application forms as approved by the division, and general information regarding the provisions of this chapter to each hospital licensed to operate in this state and to each law enforcement agency.

Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978. Amended by Laws 1980, c. 80-146, § 18, eff. July 1, 1980.

Laws 1980, c. 80-146, § 18, inserted in the first sentence "the lobby or waiting area of" preceding "its emergency room", inserted "of Labor and Employment Security" following "Department" in the second sentence, and substituted "division" for "commission" in the second sentence.

960.24 Duties and functions of the department

It shall be the duty of the department to assist persons who are victims of crime. The department shall:

(1) Seek to identify the victims of crime and inform them of the provisions of this chapter.

(2) Serve as a clearinghouse for information relating to the problems encountered by the victims of crime.

(3) Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies or groups in a concerted effort to aid persons who are victims of crime.

(4) Assist public agencies and local governments to provide assistance for victims of crime.

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(5) Act as an advocate for the victims of crime to obtain aid and services from public or private health, education, welfare, or rehabilitation agencies or groups to treat persons who have been victims of crime.
Laws 1977, c. 77-452, § 1, eff. Jan. 1, 1978.

960.25 Surcharge on fines, and bail bonds

In addition to any fine for any criminal offense prescribed by law, including a criminal traffic offense, there is hereby established and created an additional 5-percent surcharge thereon which shall be imposed, levied, and collected together with such fine. The principal amount of any bail bond given as prescribed by law shall be increased by an additional 5-percent surcharge which is established hereby.

Laws 1977, c. 77-452, § 6, eff. June 30, 1977. Amended by Laws 1980, c. 80-146, § 19, eff. July 1, 1980; Laws 1982, c. 82-222, § 2, eff. April 28, 1982.

Laws 1980, c. 80-146, § 19, deleted reference to civil penalties. Laws 1982, c. 82-222, § 2, included criminal traffic offenses.

960.28 Payment for victims' initial examinations.--

(1) The Bureau of Crimes Compensation of the division shall pay for medical expenses connected with an initial physical examination of any victim who reports a violation of chapter 794 to a law enforcement officer. Such payment shall be made regardless of whether or not the victim is covered by health or disability insurance. In the event that the insurance company does not cover the full amount, the bureau shall provide the balance up to a maximum of \$150. The payment shall be made only out of moneys allocated to the bureau for the purposes of this section, and the payment shall not exceed \$150 with respect to any violation. No payment shall be made for any physical examination unless the law enforcement officer certifies in writing that, based upon his investigation and the results of the physical examination by a physician or other medically trained personnel qualified under chapter 464, excluding s. 464.003(5); chapter 458; or chapter 459, he reasonably believes that an offense under chapter 794 has been committed and that the claimant is the victim of such offense. Further, the payment shall not be made to the victim if the victim has not paid the bill rendered by the medical

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provider; payment, in such event, may be made directly to the medical provider. ~~Further, any payment for medical expenses under this section is contingent upon the victim's agreement to bring charges of a violation of chapter 794 and to appear as a witness at any prosecution of such violation.~~

(2) The bureau shall have the authority to allow, deny, controvert, or litigate claims made against it pursuant to this section.

(3) Records relating to payments made under this section are confidential and are exempt from the provisions of s. 119.012.

(4) Any defendant who pleads guilty or nolo contendere to, or is convicted of, any violation of chapter 794 shall be ordered by the court to make restitution to the Crimes Compensation Trust Fund in an amount equal to the compensation paid to the victim or medical provider by the bureau for the cost of the initial examination.

Section 2. This act shall take effect July 1, 1983.

Section 1. Subsection (3) is added to section 316.660, Florida Statutes, to read:

316.660 Disposition of fines and forfeitures collected for violations.--

(3) The additional costs and surcharges on criminal traffic offenses provided for under ss. 960.20 and 960.25 of the Florida Crimes Compensation Act shall be collected and distributed by the clerk of the court as provided therein. The additional costs and surcharges shall also be collected for the violation of any ordinances adopting the criminal traffic offenses enumerated in s. 318.17.

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775.0835 Fines; surcharges; Crimes Compensation Trust Fund

(1) When any person pleads guilty or nolo contendere to, or is convicted of, any felony or misdemeanor under the laws of this state which resulted in the injury or death of another person, the court may, if it finds that the defendant has the present ability to pay the fine and finds that the impact of the fine upon the defendant's dependents will not cause such dependents to be dependent on public welfare, in addition to any other penalty, order the defendant to pay a fine, commensurate with the offense committed and with the probable impact upon the victim, but not to exceed \$10,000. The fine shall be deposited in the Crimes Compensation Trust Fund.

(2) In addition to any fine, civil penalty, or other penalty provided by statute, ordinance, or other law, there shall be imposed, levied, and collected by the courts of this state the 5 percent surcharge on all fines, civil penalties, and forfeitures, as established and created in s. 960.25, which surcharge shall be deposited in the Crimes Compensation Trust Fund created by s. 960.21.

(3) The additional \$15 \$10 obligation created by s. 960.20 shall be collected, and \$14 \$9 of each \$15 \$10 collected shall be credited to the Crimes Compensation Trust Fund, prior to any fine or surcharge authorized by this chapter.

775.089 Restitution

(1) In addition to any punishment, the court may order the defendant to make restitution to the aggrieved party for damage or loss caused by the defendant's offense, if the defendant is able or will be able to make such restitution. Restitution may be monetary or nonmonetary restitution. The court may make the payment of restitution a condition to probation in accordance with s. 948.03.

(2) In determining the amount and method of payment of restitution, the court shall consider the financial resources of the defendant and the burden the payment of restitution will impose on the defendant.

(3) Any defendant ordered to make restitution may petition the court which ordered him to make such restitution for remission from any payment of restitution or from any unpaid portion thereof. If the court finds that the payment of restitution due will impose an undue hardship on the defendant or his family, the court may grant remission from any payment of restitution or modify the method of payment.

(4) When a corporation or unincorporated association is ordered to make restitution, the person authorized to make disbursements from the assets of such corporation or association shall pay restitution from such assets, and such person may be held in contempt for failure to make such restitution.

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(5) If a defendant who is required to make restitution defaults in any payment of restitution or installment thereof, the court may hold him in contempt unless such defendant has made a good faith effort to make restitution. If the defendant has made a good faith effort to make restitution, the court may, upon motion of the defendant, modify the order requiring restitution by:

(a) Providing for additional time to make any payment in restitution.
(b) Reducing the amount of any payment in restitution or installment thereof.

(c) Granting a remission from any payment of restitution or part thereof.

(6) Any default in payment of restitution may be collected by any means authorized by law for enforcement of a judgment.

(7) The court may order the clerk of the court to collect and disburse restitution payments in any case.

Section 6. Section 921.187, Florida Statutes, is created to read:

921.187 Disposition and sentencing; alternatives.--The following alternatives for the disposition of criminal cases shall be used in a manner which will best serve the needs of society, which will punish criminal offenders, and which will provide the opportunity for rehabilitation. The court may:

(13) Make any other disposition that is authorized by law.

944.514 Private employment of inmates; disposition of compensation received

Notwithstanding the provisions of any other law, an inmate may be employed by the nonprofit corporation created pursuant to s. 945.1351 or by another private enterprise operating on the grounds of a correctional institution prior to the last 18 months of his confinement. Compensation received for such employment shall be credited to an account for the prisoner and shall be used to reimburse the state for lodging, food, and other expenses incurred for sustaining the inmate according to rules promulgated by the department and to make any court-ordered payments. In addition to the above, a formula shall be developed to determine the amounts to be disbursed to the legal dependents of the convicted felon and to the victim or victims of the crime or to their dependents. The balance in such account shall be disbursed to the inmate upon release from incarceration.
Laws 1981, c. 81-125, § 2, eff. July 1, 1981.

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945.30 Payment for cost of supervision and rehabilitation

(1) Any person under probation or parole supervision, except a person on probation or parole within or without the state under an interstate compact adopted pursuant to chapter 949, shall be required to contribute no less than \$10 or more than \$50 per month as decided by the sentencing court, to a court-approved public or private entity providing him with supervision and rehabilitation. Any failure to pay such contribution shall constitute grounds for the revocation of probation by the court or the revocation of parole by the Parole and Probation Commission. The Department of Corrections may exempt a person from the payment of all or any part of the foregoing contribution if it finds any of the following factors to exist:

(a) The offender has diligently attempted, but been unable, to obtain employment which provides him sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or course of vocational or technical training designed to fit the student for gainful employment. Certification of such student status shall be supplied to the Secretary of Corrections by the educational institution in which the offender is enrolled.

(c) The offender has an employment handicap, as determined by a physical, psychological, or psychiatric examination acceptable to, or ordered by, the secretary.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of such contribution constitutes an undue hardship on the offender.

(f) There are other extenuating circumstances, as determined by the secretary.

(2) In addition to the contribution required under subsection (1), the department shall provide a maximum payment of \$10 per month for each probationer who is contributing \$10 per month to the court-approved public or private entity providing him with supervision or rehabilitation. The department shall make such payment to the court-approved public or private entity providing supervision to the offender under this section. Such payment shall be implemented through a contract to be entered into by the Secretary of Corrections and the public or private entity. Terms of the contract shall state, but not be limited to, the extent of services to be rendered by the public or private entity providing supervision or rehabilitation. In addition, the public or private entity shall supply the department with a monthly report documenting the acceptance of each offender placed under its supervision by the court, documenting the payment of the required contribution by each offender under supervision or rehabilitation, and notifying the department of all offenders for whom supervision or rehabilitation shall be terminated. Supervisory records of the public or private entity shall be open to inspection upon the request of the department or its agents.

945.091 Extend the limits of confinement; restitution by employed inmates

(1) The department is authorized to adopt regulations permitting the extension of the limits of the place of confinement of an inmate as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, and following investigation and approval by the secretary, who shall maintain a written record of such action, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to:

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(a) Visit, for a specified period, a specifically designated place or places for the purpose of visiting a dying relative, attending the funeral of a relative, or arranging for employment or for a suitable residence for use when released, to otherwise aid in the rehabilitation of the inmate, or for another compelling reason consistent with the public interest, and return to the same or another institution or facility designated by the Department of Corrections; or

(b) Work at paid employment, participate in an education or a training program, or voluntarily serve a public or nonprofit agency in the community, while continuing as an inmate of the institution or facility in which he shall be confined, except during the hours of his employment, education, training, or service and traveling thereto and therefrom. Inmates shall participate in paid employment only during the last 18 months of their confinement, unless sooner requested by the Parole and Probation Commission.

(5)(a) The department may require inmates working at paid employment as provided in paragraph (1)(b) to provide restitution to the aggrieved party for the damage or loss caused by the offense of the inmate, in an amount to be determined by the department.

(b) An offender who is required to provide restitution or reparation may petition the circuit court to amend the amount of restitution or reparation required or to revise the schedule of repayment established by the department or the Parole and Probation Commission.

947.181 Victim restitution

(1) The Parole and Probation Commission may require, as a condition of parole, reparation or restitution to the aggrieved party for the damage or loss caused by the offense for which the parolee was imprisoned. The maximum amount of reparation or restitution allowable may be determined by the court at the time of sentencing. The amount of such reparation or restitution shall be determined by the Parole and Probation Commission.

(2) If the parolee fails to make the reparation or restitution to the aggrieved party, as authorized in subsection (1), it shall be considered by the commission as a violation of parole as specified in s. 947.21 and may be cause for revocation of his parole.

948.01 When courts may place defendant on probation or into community control.--

(1) Any court of the state having original jurisdiction of criminal actions, where the defendant in a

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(4) If, after considering the provisions of s. 948.01(3) and the offender's prior record or the seriousness of the offense, it appears to the court in the case of a felony disposition that probation is an unsuitable dispositional alternative to imprisonment, the court may place the offender in a community control program. Or, in cases of prior disposition of a felony commitment, upon motion of the offender, the department, or upon its own motion, the court may, within the court's period of retained jurisdiction, following commitment, suspend the further execution of the disposition and place the offender in a community control program upon such terms as the court may require. The court may consult with a local offender advisory council pursuant to s. 944.927 with respect to the placement of an offender into community control. Not later than 3 working days prior to the hearing on the motion, the department shall forward to the court all relevant material on the offender's progress while in custody. If this sentencing alternative to incarceration is utilized the court shall:

(a) Determine what community-based sanctions will be imposed in the community control plan. Community-based sanctions may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the offender's liberty.

(b) After appropriate sanctions for the offense are determined, the court shall develop, approve, and order a plan of community control which will contain rules, requirements, conditions, and programs that are designed to encourage

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noncriminal functional behavior and promote rehabilitation of the offender and protection of the community.

(5) The sanctions imposed by order of the court shall be commensurate with the seriousness of the offense. When supervision or a program of public service is ordered by the court, the duration of such supervision or program shall not be longer than the sentence that could be imposed if the offender were committed for the offense, or for a period not to exceed 2 years, whichever is less. When restitution or public service is ordered by the court, the amount of restitution or public service shall not be greater than an amount the offender could reasonably be expected to pay or perform. An offender who participates in any work program under the provisions of this chapter shall be considered an employee of the state for purposes of liability, unless otherwise provided by law.

(6) Whenever an offender is required by the court to participate in any work program under the provisions of this chapter or whenever an offender volunteers to work in a supervised work program conducted by a specified state, county, municipal, or community service organization or to work for the victim, either as an alternative to monetary restitution or as a part of the rehabilitative or community control program, the offender shall be considered an employee of the state for the purposes of chapter 440. In determining the average weekly wage, unless otherwise determined by a specific funding program, all remuneration received from the employer shall be considered a gratuity, and the offender shall not be entitled to any benefits otherwise payable under s. 440.15, regardless of whether the offender may be receiving wages and remuneration from other employment with another

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employer and regardless of his future wage-earning capacity.
The provisions of this subsection shall not apply to persons
performing labor under a sentence of a court to perform
community services as provided in s. 316.193.

* * *

948.03, Florida Statutes, to read:

948.03 Terms and conditions of probation.--

(1) The court shall determine the terms and conditions of probation and may include among them the following, that the probationer shall:

(g) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court. The court shall make such reparation or restitution a condition of probation, unless the court determines that compelling and extraordinary reasons exist to the contrary.

* * *

944.512 State lien on proceeds from literary or other type of account of crime for which imprisoned

(1) A lien prior in dignity to all others shall exist in favor of the state upon royalties, commissions, proceeds of sale, or any other thing of value payable to or accruing to a convicted felon or a person on his behalf, including any person to whom the proceeds may be transferred or assigned by gift or otherwise, from any literary, cinematic, or other account of the crime for which he was convicted.

(2) The proceeds of such account shall be distributed as follows:

(a) Twenty-five percent to the dependents of the convicted felon.

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(b) Twenty-five percent to the victim or victims of the crime or to their dependents, to the extent of their damages as determined by the court in the lien enforcement proceedings.

(c) An amount equal to pay court costs, which shall include jury fees and expenses, court reporter fees, and reasonable per diem for the prosecuting attorneys for the state, shall go to the General Revenue Fund. Additional costs shall be assessed for the computed per capita cost of imprisonment in the state correctional institution. Such costs shall be determined by the Auditor General.

(d) The rest, residue, and remainder to the convicted felon upon his or her release or parole or upon the expiration of his or her sentence.

(3) The department is hereby authorized and directed to report to the Department of Legal Affairs the existence or reasonably expected existence of circumstances which would be covered by this section. Upon such notification, the Department of Legal Affairs is authorized and directed to take such legal action as is necessary to perfect and enforce the lien created by this section.

* * *

92.142 Witnesses; pay

Witnesses in all cases, civil and criminal, in all courts, now or hereafter created, and witnesses summoned before any arbitrator or master in chancery shall receive for each day's actual attendance \$5 and also 6 cents per mile for actual distance traveled to and from the courts. Witnesses in criminal cases required to appear in counties other than the county of their residence

and residing more than 50 miles from the location of the trial shall be entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, in lieu of any other witness fee at the discretion of the court.

* * *

918.14 Tampering with witnesses

(1) It is unlawful for any person, knowing that a criminal trial, an official proceeding, or an investigation by a duly constituted prosecuting authority, a law enforcement agency, a grand jury or legislative committee, or the Judicial Qualifications Commission of this state is pending or knowing that such is about to be instituted, to endeavor or attempt to induce or otherwise cause a witness to:

(a) Testify or inform falsely; or

(b) Withhold any testimony, information, document, or thing.

Amended by Laws 1975, c. 75-298, § 44, eff. Oct. 1, 1975.

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(2) If any person violates the provisions of this section by the use of force, deception, threat, or offer of pecuniary benefit to induce any conduct described in subsection (1), the violation shall constitute a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084. In all other cases, a violation shall constitute a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.

(3) (a) It is unlawful for any person:

1. To cause a witness to be placed in fear by force or threats of force;
2. To make an assault upon any witness or informant; or
3. To harm a witness by any unlawful act in retaliation against the said witness for any thing lawfully done in the capacity of witness or informant.

(b) Any person violating the provisions of this subsection shall be guilty of a felony of the third degree, punishable as provided in § 775.082, § 775.083, or § 775.084.

* * *

907.041 Pretrial detention and release

(1) Legislative Intent.—It is the policy of the state that persons committing serious criminal offenses, posing a threat to the safety of the community or the integrity of the judicial process, or failing to appear at trial be detained upon arrest. However, persons found to meet specified criteria shall be released under certain conditions until proceedings are concluded and adjudication has been determined. The Legislature finds that this policy of pretrial detention and release will assure the detention of those persons posing a threat to society while reducing the costs for incarceration by releasing, until trial, those persons not considered a danger to the community who meet certain criteria. It is the intent of the Legislature that the primary consideration be the protection of the community from risk of physical harm to persons.

(b) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure his appearance at subsequent proceedings;
2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;

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921.143 Appearance of victim to make statement at sentencing hearing; submission of written statement

(1) At the sentencing hearing, and prior to the imposition of sentence upon any defendant who has pleaded guilty or nolo contendere to any crime, the sentencing court shall permit the victim of the crime for which the defendant is being sentenced to:

- (a) Appear before the sentencing court for the purpose of making a statement under oath for the record; or
- (b) Submit a written statement under oath to the office of the state attorney, which shall be filed with the sentencing court.

(2) The state attorney or any assistant state attorney shall advise all victims that statements, whether oral or written, shall relate solely to the facts of the case and the extent of any injuries, financial losses, and loss of earnings directly resulting from the crime for which the defendant is being sentenced.

(3) The court may refuse to accept a negotiated plea and order the defendant to stand trial.

* * *

812.061 Larceny; return of property to owner; procedure

In every instance in which any money or motor vehicle shall have been taken from its rightful owner under circumstances constituting larceny of such money or motor vehicle and such money or motor vehicle is being held by state, county or municipal officials as evidence, the rightful owner of such money or motor vehicle may obtain the return and possession thereof in the following manner:

(1) The rightful owner shall file a petition in the court having criminal jurisdiction describing the money or motor vehicle, the time and manner in which the same was taken from the rightful owner, the value thereof if the same is money or motor vehicle, and that the petitioner is the true and lawful owner thereof. Such petition shall be under oath, sworn to by the petitioner or, if the petitioner is a corporation, by a duly authorized officer or agent thereof, or by such person other than the petitioner who shall have actual knowledge of the facts alleged in such petition.

(2) Notice of the filing of such petition and a copy thereof shall be served upon any person charged with the larceny of the money or motor vehicle involved in the same manner and for the same fee as the service of a summons.

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(3) If no person has been charged by indictment or information with larceny of the money or motor vehicle involved, or if a person has been so charged and cannot be found within the jurisdiction of the court out of which capias has issued and that fact has been noted on the return of such capias, then the petitioner shall publish in a newspaper of general circulation within the county in which the alleged larceny occurred once a week for 2 consecutive weeks, two publications being sufficient, notice of the filing of such petition. Such notice shall describe the money or motor vehicle involved and the time and particular place of its taking.

(4) Copies of the mentioned petition shall be furnished the officer having custody of the money or motor vehicle involved and also the prosecuting officer of the court having criminal jurisdiction and such officers shall be notified of any hearings and proceedings had upon such petition.

(5) Within 5 days after receipt of service of the notice hereinabove provided or within 10 days after the last publication of the mentioned notice, any person other than the petitioner claiming title or right of possession to the money or motor vehicle involved shall file his objections to the granting of such petition. Such objections shall be under oath of the person making them and shall set forth facts showing that the petitioner is not the rightful owner or not entitled to possession. If the person interposing objections to the petition desires that the question of ownership or right to possession be resolved by a jury, he shall make and file a demand for a jury trial at the time of filing his objections. If the objector fails to demand a jury trial at such time he shall be deemed to have waived such right.

(6) If objections are filed, as herein provided, the court having criminal jurisdiction may order the pleadings transferred to the court having civil jurisdiction of the cause where the same shall be adjudicated upon the pleadings, or he may defer hearing the matter until the criminal case has been adjudicated.

(7) If no objections are filed within the time herein provided, the court having criminal jurisdiction shall hear the matter and may, if satisfied that the petitioner is the rightful owner of the money or motor vehicle involved, order such money or motor vehicle returned to the petitioner. The court may, in its discretion, require the petitioner to post a bond in such amount as the court shall deem proper, conditioned that the petitioner will return the motor vehicle or the value of the money to the court within such time as shall be fixed by the court in the event it should be subsequently determined in judicial proceedings that

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the petitioner is not the rightful owner of such money or motor vehicle.

(8) When money or motor vehicle is returned to the rightful owner, as hereinabove provided, the court shall direct the clerk to make a detailed inventory description of such money or motor vehicle. The clerk in compliance with such direction shall make such inventory and description, including photographs of the motor vehicle involved where practicable and certify the same as being a true and correct inventory and description. The certified inventory and description shall then be filed by the clerk among the records of his office.

(9) In any trial involving the larceny of money or motor vehicle which has been returned to the rightful owner, as hereinabove provided, and it shall be necessary therein to adduce testimony concerning such money or motor vehicle, secondary evidence, including the certified inventory and description thereof shall be admissible in the same manner and to the same effect as would the admission of the said money or motor vehicle, had the same not been returned.

(10) The fact that any person charged with the larceny of money or motor vehicle has failed to object to the return of such money or motor vehicle to the alleged rightful owner thereof, or the fact that such money or motor vehicle has been returned to the alleged rightful owner thereof under the provisions of this law, shall not be offered, received or considered as evidence either for or against the defendant in such criminal action.

* * *

43.35 Witness coordinating offices.

Each court administrator shall establish a witness coordinating office in each county within his judicial circuit. The office shall be responsible for:

(1) Coordinating court appearances, including pretrial conferences and depositions, for all witnesses who are subpoenaed in criminal cases, including law enforcement personnel.

(2) Contacting witnesses and securing information necessary to place a witness on an on-call status with regard to his court appearance.

(3) Contacting witnesses to advise them not to report to court in the event the case for which they have been subpoenaed has been continued or has had a plea entered, or in the event there is any other reason why their attendance is not required on the dates they have been ordered to report.

(4) Contacting the employer of a witness, when necessary, to confirm that the employee has been subpoenaed to appear in court as a witness. In addition, the office may provide additional services to reduce time and wage losses to a minimum for all witnesses.

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Section 86. Subsections (1) and (2) of section 943.405, Florida Statutes, are amended to read:

943.405 Prevention of crimes against the elderly.--

(1) It is the express intent of the Legislature that all state agencies cooperate with the Bureau of Criminal Justice Assistance of the Department of Veteran and Community Affairs in carrying out the provisions of this section.

(2) The Bureau of Criminal Justice Assistance of the Department of Veteran and Community Affairs, in carrying out its assigned purposes under Pub. L. No. 90-351 of providing for the preparation and implementation of annual comprehensive statewide plans for the reduction of crime and improvement of the criminal justice system, and under the state plan requirement of Pub. L. No. 94-503 of providing for the development of programs and projects for the prevention of crime against the elderly, in conjunction with the Department of Health and Rehabilitative Services in carrying out its purposes of providing needed health and social services for the elderly, shall give priority to the preparation of yearly plans and a comprehensive 5-year plan for the development, implementation, and operation of programs designed to prevent crime against the elderly and to reduce the fear of crime in the elderly. The bureau shall identify, through research and through monitoring and evaluation of programs and projects conducted outside the bureau, any social, economic, or educational methods, techniques, or procedures which have the potential effectively to prevent crime against the elderly and reduce fear of crime in the elderly. The bureau shall determine the costs and benefits that would be associated with

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such prevention and reduction efforts and shall develop, or recommend the implementation of, those methods, techniques, and procedures which are found likely to be cost-efficient.

The bureau shall identify funding needs for such programs.

(3) In planning and developing programs and recommendations relating to the prevention of crime against elderly persons and reduction of fear of crime in elderly persons, the bureau shall consider and evaluate the potential for new or improved programs in, but not limited to, the following areas:

- (a) Public education and awareness;
- (b) Community coordination in areas of social services and criminal justice;
- (c) Use of the elderly as a resource in community crime prevention and the voluntary involvement of elderly persons and retired professionals in the criminal justice system itself in order to improve the responsiveness and effectiveness of the existing system;
- (d) Victim and witness assistance;
- (e) Reduction of the economic and physical consequences of crime against the elderly; and
- (f) Reduction of isolation of the elderly in the community.

(4) Other agencies of state government shall cooperate with and assist the bureau, within their available resources, in gathering statistical data and in implementing programs which have the potential to prevent crime against elderly persons and to reduce the fear of crime in elderly persons and shall consider the findings and recommendations of the bureau in developing and implementing agency programs and formulating agency budget requests. The Department of Health and Rehabilitative Services shall participate in the preparation and implementation of the comprehensive plans. The Department of Law Enforcement shall collect statistical data on the characteristics of victims of crime similar to that collected by it with respect to those who commit crimes.

(5) The bureau shall submit to the Governor for transmittal to the President of the Senate and the Speaker of the House of Representatives the first yearly plan to prevent crime against the elderly and to reduce the fear of crime in the elderly not later than March 1, 1978, and such plan shall be updated and resubmitted not later than March 1 of each calendar year thereafter through 1982. The plan shall outline bureau proposals for the identification of appropriate prevention and reduction efforts and the development of prevention and reduction programs and the provisions for services under such programs. The yearly plan shall contain, but not be limited to, the following elements:

(a) A compilation of and analysis of statistical data on types of crimes committed against the elderly in this state and the incidence of such crime. Included in this shall be an identification of the areas of the state where crime against the elderly is of significant proportions. Such data should also reflect an assessment of the degree of unreported, as well as officially reported, criminal acts.

(b) An identification and projection of the potential population for which prevention programs should be considered.

(c) An inventory and evaluation of existing prevention and reduction programs, facilities, and services in the state or nationally, including population served, cost of services provided, percentage of unmet needs, and an identification of any needed program improvement or change.

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(d) A listing of potential prevention efforts identified by the bureau, the estimated annual cost of providing such prevention services for the anticipated target population, an identification of potential funding sources, and the projected benefits of providing such services.

(6) The yearly plans shall be compiled and analyzed by the bureau in the 5-year comprehensive plan, which shall be submitted to the Governor for transmittal to the President of the Senate and Speaker of the House of Representatives with the last yearly plan on or before March 1, 1982.

(7) All funding sources, including reallocated LEAA funds, shall be considered by the bureau for implementing programs and projects for crimes against the elderly.

* * *

ELDERLY PERSONS—ABUSE AND SUBSIDY PAYMENTS

Tentative classification changes not available at time of publication

CHAPTER 83-82

SENATE BILL NO. 124

An act relating to the Department of Health and Rehabilitative Services; amending s. 827.09;

Florida Statutes, relating to protection of

abused, aged, and disabled persons; requiring

certain reports and authorizing the department

to take certain action with respect thereto;

providing for certain confidentiality;

providing penalties; amending s. 410.035;

Florida Statutes, relating to subsidy payments;

providing for development of a schedule of

subsidy payments by October 1, 1983; deleting

minimum and maximum limits thereon; repealing

ss. 410.10-410.11, Florida Statutes, relating

to the "Adult Protective Services Act;"

providing an effective date.

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(1) LEGISLATIVE INTENT.--The Legislature recognizes that there are many persons in this state who, because of age or disability, are in need of protective services. Such services should allow the individual the same rights as other citizens, and at the same time protect the individual from abuse, neglect, and exploitation. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation and to establish a program of protective and supportive services for all persons in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation. In doing so, the Legislature intends to place the least possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation.

(2) DEFINITIONS.--As used in this section:

(a) "Abuse" means treatment under which an aged or disabled person is deprived, or allowed to be deprived, of necessary treatment, habilitation, care, sustenance, clothing, shelter, supervision, or medical services essential to his well-being; or is permitted to live in an environment, when such deprivation or environment causes, or is likely to cause impairment of physical or emotional health; or is subject to physical or psychological injury.

(b) "Abused person" means any aged or disabled person who has been subjected to abuse or whose condition suggests that he has been abused.

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(c) "Aged person" means a person suffering from the infirmities of aging as manifested by organic brain damage, advanced age, or other physical, mental, or emotional dysfunctioning to the extent that the person is impaired in his ability to adequately provide for his own care or protection.

(d) "Department" means the Department of Health and Rehabilitative Services.

(e) "Disabled person" means any person who suffers from a condition of mental retardation, epilepsy, cerebral palsy, mental illness, or other disability which causes the person to be substantially unable to protect himself from the abusive conduct of others.

(f) "Exploitation" means an unjust or improper use of another person for one's own profit or advantage.

(g) "Facility" means any public or private hospital, training center, clinic, school, or other program or service for aged or disabled persons.

(h) "Indicated report" means a report made pursuant to this section when a protective investigation determines that some indication of abuse, neglect, or exploitation exists.

(i) "Neglect" means to omit, forbear, or fail to exercise a degree of care and caution that a prudent person would deem essential to insure the well-being of an aged or disabled person and, by such omission, forbearance, or failure, significantly impair or jeopardize the physical or emotional health of the aged or disabled person.

(j) "Protective services" means those services, the objective of which is to protect an aged or disabled person. Such protective services shall include, but shall not be

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limited to, evaluation of the need for services, arrangements for appropriate living quarters, obtaining financial benefits to which the person is entitled, or securing medical and legal services. In those situations where exploitation, prevention of injury, and protection of the person and his property are at issue, protective services shall include seeking the appointment of a guardian for the person or seeking protective placement.

(k) "Unfounded report" means a report made pursuant to this section when a protective investigation determines that no indication of abuse, neglect, or exploitation exists.

(3) REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION OF AGED OR DISABLED PERSONS REQUIRED.

(a) Any person, including, but not limited to, any:

1. Physician, osteopath, medical examiner, chiropractor, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons.
2. Health or mental health professional other than one listed in subparagraph 1.
3. Practitioner who relies solely on spiritual means for healing.
4. Nursing home worker, adult congregate living facility worker, adult day care center worker, social worker, or other professional adult care, foster care, residential or institutional worker.
5. Law enforcement officer.

who knows, or has reasonable cause to suspect, that an aged or disabled person is an abused, neglected, or exploited person shall immediately report such knowledge or suspicion to the

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department's abuse registry on the single statewide tollfree telephone number or directly to the local office of the department responsible for investigation of reports made pursuant to this section.

(b) Each report made by a person in an occupation designated in paragraph (a) shall be confirmed in writing by the individual making the report to the local office of the department within 48 hours of the initial report.

(c) Reports involving known or suspected institutional abuse, neglect, or exploitation shall be made and received in the same manner as all other reports made pursuant to this section.

(d) The statewide tollfree telephone number for the central abuse registry shall be posted in all facilities operated by or under contract with or licensed by the department which provide services to aged or disabled persons. Such posting shall be clearly visible and in a prominent place within the facility and shall be accompanied by the words, "To Report the Abuse, Neglect, or Exploitation of an Elderly or Disabled Person, Please call the Tollfree Number."

(4) MANDATORY REPORTING OF DEATH AND POSTMORTEM INVESTIGATION BY MEDICAL EXAMINER.--Any person required to report or investigate cases of suspected abuse, neglect, or exploitation who has reasonable cause to suspect that an aged or disabled person died as a result of abuse, neglect, or exploitation, shall report his suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report his findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department.

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Autopsy reports maintained by the medical examiner shall not be subject to the confidentiality requirements provided for in this section.

(5) REPORTS OF INSTITUTIONAL ABUSE, NEGLECT, OR EXPLOITATION.--The department shall conduct a protective investigation of each report of institutional abuse, neglect, or exploitation. Upon receipt of a report which alleges that an employee or agent of the department acting in an official capacity, has committed an act of abuse, neglect, or exploitation, the department shall immediately initiate a protective investigation and shall notify the state attorney in whose circuit the alleged abuse, neglect, or exploitation occurred.

(6) ABUSE REGISTRY.--

(a) The department shall establish and maintain a central abuse registry which shall receive reports made pursuant to this section in writing or through a single statewide tollfree telephone number which any person may use to report known or suspected abuse, neglect, or exploitation at any hour of the day or night, any day of the week. The abuse registry shall be operated in such a manner as to enable the department to:

1. Immediately identify and locate prior reports or cases of abuse, neglect or exploitation.
2. Regularly evaluate the effectiveness of the department's program for abused, neglected, or exploited persons through the development and analysis of statistical and other information.

(b) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation, the abuse

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registry shall immediately notify the local office of the department with respect to the report, any previous report concerning a subject of the present report, or any other pertinent information relative thereto.

(c) Upon completion of its investigation, the local office of the department shall classify reports either as indicated or unfounded. All identifying information in the abuse registry maintained in unfounded reports shall be expunged immediately. All identifying information in the abuse registry maintained in indicated reports shall be expunged from the registry 7 years from the date of the last indicated report concerning the same victim or the same perpetrator. All information, other than identifying information, maintained in indicated or unfounded reports at the time of expunction shall be disposed of in a manner deemed appropriate by the department and pursuant to s. 119.041 and s. 267.051(6). Nothing in this section is intended to require the expunction or destruction of case records or information required by the Federal Government to be retained for future audit.

(7) PROTECTIVE INVESTIGATIONS.--

(a) The department shall, upon receipt of a report of abuse, neglect, or exploitation of an aged or disabled person, cause an immediate protective investigation to be made and shall in turn, upon determining probable cause, notify the state attorney. The department shall, within 24 hours of receipt of the report notify the appropriate human rights advocacy committee, as established pursuant to s. 20.19(7), that an alleged abuse has occurred. Such notice may be accomplished verbally or in writing and shall include the name

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of the person alleged to have been abused and the nature of the report. The department shall provide protective services under any of the following conditions:

1. The person demonstrates a need for, and requests, such services.

2. An interested person requests such services on behalf of a person in need of services.

3. The department determines a person is in need of such services.

4. A court orders such services.

(b) Voluntary services.--An individual shall receive protective services voluntarily unless ordered by the court, requested by a guardian, or provided in accordance with subsection (8).

(8) INVOLUNTARY PROVISION OF SERVICES.--

(a) Every reasonable effort shall be made to secure the consent and participation of the aged or disabled person in the assessment and resolution of his own need for protective services.

(b) Upon probable cause to believe that an aged or disabled person is being abused, neglected, or exploited, a representative of the department, accompanied by a law enforcement officer may enter a premises after obtaining a court order and announcing their authority and purpose.

(c) Forcible entry shall be attained only after a court order has been obtained, unless there is probable cause to believe that the delay incident of such an order would cause an aged or disabled person to incur a substantial risk of life-threatening physical harm.

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(d) When, from the personal observation of a representative of the department and a law enforcement officer, it appears probable that an aged or disabled person is likely to incur a substantial risk of life-threatening physical harm or deterioration if not immediately removed from the premises, the department's representative may, when authorized by a court order, take into custody and transport, or make arrangements for the transportation and payment thereof, the individual to an appropriate medical or protective services facility.

(e) When action is taken under this section, a preliminary hearing shall be held within 48 hours of the signing of the court order, excluding Saturdays, Sundays, and legal holidays, to establish probable cause for grounds for protective placement.

(f) Upon a finding of probable cause, the court may order temporary placement for up to 4 days, pending the hearing for a need for continuing services.

(9) COOPERATION WITH LAW ENFORCEMENT AND OTHER AGENCIES.--

(a) All state, county, and municipal law enforcement and public agencies have a duty to cooperate with the department and its employees, transmit reports of abuse, neglect, and exploitation to the department, and protect and enhance the welfare of aged or disabled persons who are potentially subject to abuse, neglect, or exploitation detected by a report made pursuant to this section.

(b) Any funds appropriated by counties for home health care or boarding home, foster home, or nursing home services may be matched by state and federal funds; such funds shall be

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utilized by the Department of Health and Rehabilitative Services for the benefit of aged or disabled persons in said counties.

(c) The Department of Health and Rehabilitative Services may purchase services from any public or private institution, or institution or agency within the state which meets the standards and rules prescribed by the department for the proper care and supervision of abused, neglected, or exploited persons.

(d) Every facility serving aged or disabled persons shall inform residents of their rights to report abusive, neglectful, or exploitive practices and shall establish appropriate policies and procedures to facilitate such reporting.

(10) CONFIDENTIALITY OF REPORTS AND RECORDS.--

(a) In order to protect the rights of the individual or other persons responsible for the welfare of the aged or disabled person, all records concerning reports of abuse, neglect, or exploitation of the aged or disabled person, including reports made to the abuse registry and to local offices of the department and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1), and shall not be disclosed except as specifically authorized by this section.

(b) Access to such records, excluding the name of the person making the report, which shall be released only as provided in paragraph (d), shall be granted only to the following persons, officials, and agencies for the following purposes:

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1. Employees or agents of the department responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, adult congregate living facilities, adult day care centers or other facilities, used for the placement of aged or disabled persons.
2. A law enforcement agency investigating a report of known or suspected abuse, neglect, or exploitation.
3. The state attorney of the judicial circuit in which the aged or disabled individual resides or in which the alleged abuse, neglect, or exploitation occurred.
4. Any aged or disabled person or perpetrator who is the subject of a report or the subject's guardian, custodian, guardian ad litem, or counsel.
5. A court, by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to in-camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.
6. A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.
7. Any appropriate official of the department responsible for:
 - a. Administration or supervision of the department's program for the prevention, investigation, or treatment of abuse, neglect, or exploitation when carrying out his official function; or

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- b. Taking appropriate administrative action concerning an employee of the department alleged to have perpetrated institutional abuse, neglect, or exploitation.
8. Any person engaged in bona fide research or audit purposes. However, no information identifying the subjects of the report shall be made available to the researcher unless such information is absolutely essential to the research purpose, suitable provision is made to maintain the confidentiality of the data, and the department has given written approval.
- (c) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the victim or the person perpetrating the abuse.
- (d) The name of any person reporting abuse, neglect, or exploitation shall in no case be released to any person other than employees of the department responsible for protective services, the abuse registry, or the appropriate state attorney without the written consent of the person reporting abuse, neglect, or exploitation when deemed necessary by the state attorney or the department to protect an aged or disabled person who is the subject of a report, provided that the fact that such person made the report is not disclosed. The department shall, upon receipt of an application of a person applying for approval or licensure of a facility to care for the aged or disabled persons, whether such care is for less than or more than 24 hours, search its abuse registry for the existence of an indicated report and the results of the adult protective assessment conducted pursuant thereto.

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(11) TRANSMITTAL OF RECORDS.--With respect to any case of reported abuse of an aged or disabled person, the department, when appropriate, shall transmit all reports received by it, which shall contain the results of the investigation, to the state attorney of the county where the incident occurred.

(12) IMMUNITY.--Anyone participating in the making of a report pursuant to this section or participating in a judicial proceeding resulting therefrom shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed. Further, no resident or employee of a facility serving aged or disabled persons shall be subjected to reprisal or discharge because of his actions in reporting abuse pursuant to the requirements of this section.

(13) ABROGATION OF PRIVILEGED COMMUNICATIONS.--The privileged quality of communication between husband and wife and between any professional person and his patient or client, and any other privileged communication except that between attorney and client, as such communication relates to both the competency of the witness and to the exclusion of confidential communications, shall not apply to any situation involving known or suspected abuse, neglect, or exploitation and shall not constitute grounds for failure to report as required by this section, failure to cooperate with the department in its activities pursuant to this section, or failure to give evidence in any judicial proceeding relating to abuse, neglect, or exploitation of an aged or disabled person.

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(14) RULES TO BE PROMULGATED.--The Department of Health and Rehabilitative Services shall promulgate rules for the implementation of this section.

(15) PENALTIES.--

(a) Any person required by this section to report a case of known or suspected abuse, neglect, or exploitation of an aged or disabled person who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who knowingly and willfully makes public or discloses any confidential information contained in the abuse registry or in the records of any case of abuse, neglect, or exploitation except as provided in this section, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or 775.084.

(c) Any person who knowingly or willfully abuses, neglects or exploits an aged or disabled person and, in so doing, causes great bodily harm, permanent disfigurement, or permanent disability to such person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Any person who knowingly or willfully abuses, neglects, or exploits an aged or disabled person is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 410.035, Florida Statutes, is amended to read:

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(1) The department shall develop by October 1, 1983, ~~establish by rule by January 1, 1978,~~ a schedule of subsidy payments to be made to persons providing home care for certain eligible elderly persons. Payments shall be no less than 10 percent of the prevailing rate paid by the department for the lowest level of nursing home care under s. 499.266, and no greater than 45 percent of said amount. Payments shall be based on the financial status of the person receiving care. Payments shall include, but not be limited to:

(a) A support and maintenance element, to include costs of housing, food, clothing, and incidentals.

(b) Payments for medical, pharmaceutical, and dental services essential to maintain the health of the elderly person and not covered by Medicare, Medicaid, or any form of insurance.

(c) When necessary, special supplements to provide for any service and specialized care required to maintain the health and well-being of the elderly person.

(2) The department shall develop a plan for the implementation of the schedule of a program of uniform subsidy payments to persons providing home care for the elderly.

Section 3. Sections 410.10-410.11, Florida Statutes, are hereby repealed.

Section 4. This act shall take effect July 1, 1983.

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395.0201 Treatment of sexual assault victims

Any licensed facility under this part which provides emergency room services may arrange for the rendering of appropriate medical attention and treatment of victims of sexual assault through:

(1) Such gynecological, psychological, and medical services as are needed by the victim.

(2) The administration of medical examinations, tests, and analyses required by law enforcement personnel in the gathering of evidence required for investigation and prosecution.

(3) The training of medical support personnel competent to provide the medical services and treatment as described in subsections (1) and (2). Such licensed facility may also arrange for the protection of the victim's anonymity while complying with the laws of this state and may encourage the victim to notify law enforcement personnel and to cooperate with them in apprehending the suspect.

918.16 Sex offenses; testimony of person under age 16; courtroom cleared; exceptions

In the trial of any case, civil or criminal, when any person under the age of 16 is testifying concerning any sex offense, the court shall clear the courtroom of all persons except parties to the cause and their immediate families or guardians, attorneys and their secretaries, officers of the court, jurors, newspaper reporters or broadcasters, and court reporters.

918.17 Sexual battery or child abuse cases; videotaping of testimony of victims under age 12 permitted

(1) Upon application to the court and reasonable notice to the defendant, the state may apply for an order to videotape out of open court the testimony of a child 11 years of age or younger who has been the victim of a sexual battery under s. 794.011 or to videotape the testimony of a child 11 years of age or younger who has been the victim of aggravated child abuse under s. 827.03 or child abuse under s. 827.04. The court may grant an order to videotape testimony as provided herein only if it finds that:

(a) The victim of the offense is a child 11 years of age or younger; and

(b) There is a substantial likelihood that such child will suffer severe emotional or mental strain if required to testify in open court.

(2) The trial judge shall preside at such proceeding and shall rule on all questions as if at trial.

(3) The application referred to in subsection (1) shall be made prior to trial, and the videotaping of the testimony shall be made only after the trial has commenced. The videotaped testimony shall be admissible as evidence in the trial of the cause.

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741.01 County court judge or clerk of the circuit court to issue marriage license; fee

(1) Every marriage license shall be issued by a county court judge or clerk of the circuit court under his hand and seal. The county court judge or clerk of the circuit court shall issue such license, upon application therefor, if there appears to be no impediment to the marriage. The county court judge or clerk of the circuit court shall collect and receive a fee of \$2 for receiving the application for the issuance of a marriage license.

(2) The fee charged for each marriage license issued in the state shall be increased by the sum of \$10. This fee shall be collected upon receipt of the application for the issuance of a marriage license. The Executive Office of the Governor shall establish a trust fund for the purpose of collecting and disbursing funds generated from the increase in marriage license fees. Such funds generated shall be directed to the Department of Health and Rehabilitative Services for the specific purpose of funding spouse abuse centers, and the funds shall be appropriated in a "grants-in-aid" category to the Department of Health and Rehabilitative Services for the purpose of funding spouse abuse centers.

* * *

741.30 Petition for order to restrain abusive spouse; penalty for violation of order

(1) Any spouse as defined in s. 409.602(4), who has filed a complaint of spouse abuse with a law enforcement agency or the clerk of the circuit court and who files a verified petition alleging spouse abuse with the clerk of the circuit court of the county wherein the person filing the verified petition resides may be entitled to have the court issue a restraining order with such terms and conditions as the court deems advisable with respect to the facts alleged in the verified petition. However, upon application for such restraining order, the petitioner shall be given an expedited hearing. The verified petition shall contain the date, time, and place of the alleged spouse abuse; the law enforcement agency which investigated the complaint; and the circumstances of the spouse abuse which occurred.

(2) The verified petition shall be in the following form:

PETITION FOR AN ORDER TO RESTRAIN
AN ABUSIVE SPOUSE

Before me, the undersigned authority, personally appeared Petitioner
..... (Name), who was sworn and says that the following
statement is true.

The petitioner has filed a complaint with (law enforcement agency)
..... alleging that petitioner was abused by respondent spouse at
(place) on (date) at (time) in the follow-
ing manner: (circumstances)

A copy of the complaint filed with the law enforcement agency is attached
to this petition.

(a) The physical injury petitioner has suffered as a result of the violent
actions of respondent spouse include:

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(b) (Mark appropriate section.)

..... Petitioner and respondent now live together and respondent re-
fuses to leave.

..... Respondent lives at: (address).

(c) (Mark appropriate section.)

..... Petitioner and respondent have the following actions pending
with this court:

- legal separation
- custody or juvenile matter
- dissolution (divorce)
- nullity
- other (describe)

..... Petitioner has the following children in petitioner's custody who
are the children of respondent: (name, age, and birth date of each
child)

(d) (Mark appropriate sections.)

..... Petitioner has the following children in petitioner's custody who
are the children of respondent: (name, age, and birth date of each
child)

..... Petitioner has the following children in petitioner's custody who
are not the children of respondent: (name, age and birth date of each
child and how petitioner is related to each child)

(e) (Mark if appropriate.)

..... Petitioner has the following children in petitioner's custody who
children for the following reasons:
Petitioner seeks an order restraining the respondent spouse from abusing the
petitioner and providing for any other terms and conditions that the court
deems advisable with respect to the facts alleged in the petition.

..... (Signature of Petitioner)

Sworn to and subscribed on A, 19.....

..... (Notary Public)

My Commission Expires:

(3) The restraining order shall be served upon the spouse complained
against within 24 hours of its issuance. When the court issues the restrain-
ing order without a hearing, the court, if requested by the spouse complained
against, shall provide a hearing as soon as reasonably possible but not later
than 20 days after the date of the issuance of the order. The issuance of
such an order shall not require that the party alleging spouse abuse be repre-
sented by an attorney, nor shall such a restraining order be conditioned upon
any dissolution of marriage proceedings.

(4) Any person who has been served with a restraining order issued by a
judge of the circuit court pursuant to subsection (3) and who knowingly vio-
lates or refuses to comply with the provisions of such order is guilty of a
misdemeanor of the second degree, punishable as provided in s. 775.082, s.
775.083, or s. 775.084. When a person prosecuted for violation of a restrain-
ing order issued pursuant to this section is ordered to pay a fine, revenues
from the fine shall be collected and disbursed through the trust fund estab-
lished in s. 741.01. The Department of Health and Rehabilitative Services
may also use revenues collected through fines to fund counseling services for
the purpose of rehabilitating the abusive spouse.

* * *

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409.601 Legislative Intent

The Legislature recognizes that certain persons who assault, batter, or otherwise abuse their spouses and the persons subject to such abuse are in need of treatment and rehabilitation. It is the intent of the Legislature to assist in the development of spouse abuse centers for the victims of spouse abuse and to provide a place where the parties involved may be separated until they can be properly assisted.

Laws 1978, c. 78-251, § 1, eff. Oct. 1, 1978.

Cross References

Abuse of children, see § 827.01 et seq.
 Abuse of developmentally disabled persons, see § 827.09.
 Assault and battery, see § 784.011 et seq.
 Petition for order to restrain abusive spouse, see § 741.30.

409.602 Definitions

As used in this act:

(1) "Spouse abuse" means any assault, battery, or other physical abuse by a person upon his spouse.

(2) "Department" means the Department of Health and Rehabilitative Services.

(3) "Spouse abuse center" means a facility which provides services to victims of spouse abuse and which has been certified by the department to receive state funds.

(4) "Spouse" means a person to whom another person is married or a person to whom another person has been married and from whom such other person is now separated or divorced.

(5) "Victim" means any individual suffering assault, battery, or other physical abuse inflicted by his spouse or former spouse.

Laws 1978, c. 78-251, § 2, eff. Oct. 1, 1978. Amended by Laws 1979, c. 79-402, § 2, eff. July 3, 1979; Laws 1982, c. 82-135, § 1, eff. July 1, 1982.

¹ The words "a person to whom another person has been married and from whom such other person" were substituted by the division of statutory revision for the words "has been married and".

Laws 1979, c. 79-402, § 2, redefined "spouse abuse center" and added definitions of "spouse" and "victim".

Laws 1982, c. 82-135, § 1, inserted "or has been married and is now separated or divorced" in the definition of "spouse", and substituted "or former spouse" for "and any dependent of such individual, including a child" in the definition of "victim".

Library References
 Words and Phrases (Perm. Ed.)

409.603 Duties and functions of the department

(1) It shall be the duty of the department:

(a) To establish health, safety and minimum program requirement standards for certifying spouse abuse centers to receive state funds.

(b) To receive applications for state funding of spouse abuse centers.

(c) To approve or reject each application within 60 days of receipt of the application.

(d) To distribute funds to a certified center within 45 days after approval.

(e) To evaluate annually each spouse abuse center for compliance with the minimum standards. The department shall have the right to enter and inspect the premises of spouse abuse centers at any reasonable hour in order to effectively evaluate the state of compliance of such centers with the provisions of this section and rules in force pursuant thereto.

(2) The department shall prescribe by rule the procedures by which subsection (1) shall be implemented. Without using designated center funds, the department may:

(a) Formulate and conduct a research and evaluation program on spouse abuse and cooperate with and assist and participate in programs of other properly qualified agencies, including any agency of the Federal Government, schools of medicine, hospitals, and clinics, in planning and conducting research on the prevention, care, treatment, and rehabilitation of persons engaged in or subject to spouse abuse.

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(b) Serve as a clearinghouse for information relating to spouse abuse.
 (c) Carry on educational programs on spouse abuse for the benefit of the general public, persons engaged in or subject to spouse abuse, professional persons, or others who care for or may be engaged in the care and treatment of persons engaged in or subject to spouse abuse.

(d) Enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent spouse abuse and to treat persons engaged in or subject to spouse abuse.

Laws 1978, c. 78-281, § 3, eff. Oct. 1, 1978. Amended by Laws 1979, c. 79-402, § 3, eff. July 3, 1979.

Laws 1979, c. 79-402, § 3, substituted "health, safety and minimum program requirement" for "minimum" in subsec. (1)(a), substituted "state funding" for "the development and establishment" in subsec. (1)(b), added the second sentence to subsec. (1)(e), and substituted "shall" for "may" following "The department" at the beginning of subsec. (2).

409.604 Repealed by Laws 1982, c. 82-135, § 5, eff. July 1, 1982

The repealed section, which required an annual report by the department of health and rehabilitative to the legislature, was derived from Laws 1978, c. 78-281, § 4 and amended by Laws 1982, c. 82-213, § 2, effective July 1, 1982.

409.605 Spouse abuse centers

(1) In order to be certified and funded under this act, each center shall:
 (a) Provide a facility which will serve as a center to receive and house persons who are spouse abuse victims. For the purpose of this act, minor children and other dependents of a victim, when such dependents are partly or wholly dependent on the victim for support or services, may be sheltered with the victim in a spouse abuse center.

(b) Receive the periodic written endorsement of local law enforcement agencies; and

(c) Receive 25 percent of its funding from one or more local, municipal, or county sources, public or private. Contributions in kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part of the required local funding.

(d) Provide minimum services which shall include, but not be limited to, information and referral services, counseling services, temporary emergency shelter for more than 24 hours, and educational services for community awareness relative to the incidence of spouse abuse, the prevention of such abuse, and the care, treatment, and rehabilitation for persons engaged in or subject to spouse abuse.

(e) Participate in the provision of orientation and training programs developed for law enforcement officers, social workers, and other professionals and paraprofessionals who work with spouse abuse victims to better enable such persons to deal effectively with incidents of spouse abuse.

(2) Spouse abuse centers may be established throughout the state as private, local, state, or federal funds are available. Any local agency or organization may apply to participate in certification and state funding.

(3) The spouse abuse centers shall establish procedures pursuant to which persons subject to spouse abuse may seek services from these centers on a voluntary basis.

(4) Each spouse abuse center shall have a board composed of at least three citizens, one of whom shall be a member of a local, municipal, or county law enforcement agency.

(5)(a) All fees collected and appropriated under s. 741.01(2) for spouse abuse centers shall be distributed annually by the department to each certified center. The department shall allocate a uniform base amount to each certified center. The remainder of the appropriated funds shall be distributed in the same proportion as the number of marriage licenses sold in the center's catchment area bears to the total number of marriage licenses sold statewide. The number of marriage licenses shall be that number sold in each center's catchment area for the most recent year for which such figures are available.

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(b) For the purposes of this section, a "catchment area" means that portion of a county, the county, the counties, or the district served by a certified spouse abuse center as specified in its application to be certified and approved by the department.

Laws 1978, c. 78-281, § 5, eff. Oct. 1, 1978. Amended by Laws 1979, c. 79-402, § 4, eff. July 3, 1979; Laws 1982, c. 82-135, § 2, eff. July 1, 1982; Laws 1982, c. 82-192, § 4, eff. July 1, 1982.

Laws 1979, c. 79-402, § 4, substituted "and" for "or" preceding "house persons" in subsec. (1)(a), added subsec. (1)(d), deleted former subsecs. (2) and (3), redesignated subsecs. (4) to (7) as subsecs. (2) to (5), added the second sentence to subsec. (2), and substituted "services from" for "admission to" in subsec. (3).

Laws 1982, c. 82-135, § 2, added the second sentence to subsec. (1)(a), added subsec. (1)(e), and rewrote subsec. (5). Subsection (5) was however repealed by Laws 1982, c. 82-192, § 4. The former subsection read:
"No individual center shall receive an amount over \$50,000 from the department annually."

409.606 Information confidential

Information received by the department or by authorized persons employed by or volunteering services to a center, through files, reports, inspection, or otherwise, shall be deemed confidential information and shall not be disclosed publicly in such a manner as to identify individuals or facilities. This information is exempt from the provisions of s. 119.07.

Laws 1978, c. 78-281, § 6, eff. Oct. 1, 1978. Amended by Laws 1979, c. 79-402, § 5, eff. July 3, 1979.

Laws 1979, c. 79-402, inserted "by the department or" following "Information received" in the first sentence and added the second sentence.

409.607 Referral to centers

Where centers are available, any law enforcement officer who investigates an alleged incident of spouse abuse may advise the person subject to the abuse of the availability of a spouse abuse center from which he or she may receive services.

Laws 1978, c. 78-281, § 7, eff. Oct. 1, 1978. Amended by Laws 1979, c. 79-402, § 6, eff. July 3, 1979.

Laws 1979, c. 79-402, § 6, substituted "he or she may receive services" for "to which he or she may be admitted".

409.70 Prevention of abuse and neglect of children; state plan

(1) Legislative Intent.—The incidence of known child abuse and child neglect has increased rapidly over the past 5 years. The impact that abuse or neglect has on the victimized child, siblings, family structure, and inevitably on all citizens of the state has caused the Legislature to determine that the prevention of child abuse and neglect shall be a priority of this state. To further this end, it is the intent of the Legislature that a comprehensive approach for the prevention of abuse and neglect of children be developed for the state and that this planned, comprehensive approach be used as a basis for funding.

(2) Plan for comprehensive approach.—

(a) The Department of Health and Rehabilitative Services shall develop a state plan for the prevention of abuse and neglect of children and shall submit the plan to the Speaker of the House of Representatives, the President of the Senate, and the Governor no later than January 1, 1983. The Department of Education shall participate and fully cooperate in the development of the state plan at both the state and local levels. Furthermore, appropriate local agencies and organizations shall be provided an opportunity to participate in the development of the state plan at the local level. Appropriate local groups and organizations shall include, but not be limited to, community mental health centers; guardian ad litem programs for children under the circuit court; the school boards of the local school districts; the district human rights advocacy committees; private or public organizations or programs with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, or neglected and with expertise in working with the families of such children; private or public programs or or-

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ganizations with expertise in maternal and infant health care; multidisciplinary child protection teams; child day care centers; law enforcement agencies; and the circuit courts, when guardian ad litem programs are not available in the local area. The state plan to be provided to the Legislature and the Governor shall include, as a minimum, the information required of the various groups in paragraph (b).

(b) The development of the comprehensive state plan shall be accomplished in the following manner:

1. The Department of Health and Rehabilitative Services shall establish an interprogram task force comprised of representatives from the Children, Youth, and Families Program Office; the Children's Medical Services Program Office; the Alcohol, Drug Abuse, and Mental Health Program Office; the Health Program Office; the Developmental Services Program Office; and the Office of Evaluation. Representatives of the Department of Law Enforcement and of the Department of Education shall serve as ex officio members of the interprogram task force. The interprogram task force shall be responsible for:

a. Developing a plan of action for better coordination and integration of the goals, activities, and funding pertaining to the prevention of child abuse and neglect conducted by the department in order to maximize staff and resources at the state level. The plan of action shall be included in the state plan.

b. Providing a basic format to be utilized by the districts in the preparation of local plans of action in order to provide for uniformity in the district plans and to provide for greater ease in compiling information for the state plan.

c. Providing the districts with technical assistance in the development of local plans of action, if requested.

d. Examining the local plans to determine if all the requirements of the local plans have been met and, if they have not, informing the districts of the deficiencies and requesting the additional information needed.

e. Preparing the state plan for submission to the Legislature and the Governor. Such preparation shall include the collapsing of information obtained from the local plans, the cooperative plans with the Department of Education, and the plan of action for coordination and integration of departmental activities into one comprehensive plan. The comprehensive plan shall include a section reflecting general conditions and needs, an analysis of variations based on population or geographic areas; identified problems, and recommendations for change. In essence, the plan shall provide an analysis and summary of each element of the local plans to provide a statewide perspective. The plan shall also include each separate local plan of action.

f. Working with the specified state agency in fulfilling the requirements of subparagraphs 2., 3., 4., and 5.

2. The Department of Education and the Department of Health and Rehabilitative Services shall work together in developing ways to inform and instruct appropriate district school personnel in all school districts in the detection of child abuse and neglect and in the proper action that should be taken in a suspected case of child abuse or neglect. The plan for accomplishing this end shall be included in the state plan.

3. The Department of Law Enforcement and the Department of Health and Rehabilitative Services shall work together in developing ways to inform and instruct appropriate local law enforcement personnel in the detection of child abuse and neglect and in the proper action that should be taken in a suspected case of child abuse or neglect.

4. Within existing appropriations, the Department of Health and Rehabilitative Services shall work with other appropriate public and private agencies to emphasize efforts to educate the general public about the problem of and ways to detect child abuse and neglect and in the proper action that should be taken in a suspected case of child abuse or neglect. The plan for accomplishing this end shall be included in the state plan.

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5. The Department of Education and the Department of Health and Rehabilitative Services shall work together on the enhancement or adaptation of curriculum materials to assist instructional personnel in providing instruction through a multidisciplinary approach on the identification, intervention, and prevention of child abuse and neglect. The curriculum materials shall be geared toward a sequential program of instruction at the four progression levels, K-3, 4-6, 7-9, and 10-12. Strategies for encouraging all school districts to utilize the curriculum are to be included in the comprehensive state plan for the prevention of child abuse and neglect.

6. Each district of the Department of Health and Rehabilitative Services shall develop a plan for its specific geographical area. The plan developed at the district level shall be submitted to the interprogram task force for utilization in preparing the state plan. The district local plan of action shall be prepared with the involvement and assistance of the local agencies and organizations listed in paragraph (a) as well as representatives from those departmental district offices participating in the treatment and prevention of child abuse and neglect. In order to accomplish this, the district administrator in each district shall establish a task force on the prevention of child abuse and neglect. The district administrator shall appoint the members of the task force in accordance with the membership requirements of this section. In addition, the district administrator shall ensure that each subdistrict is represented on the task force; and, if the district does not have subdistricts, the district administrator shall ensure that both urban and rural areas are represented on the task force. The task force shall develop a written statement clearly identifying its operating procedures, purpose, overall responsibilities, and method of meeting responsibilities. The district plan of action to be prepared by the task force shall include, but shall not be limited to:

a. Documentation of the magnitude of the problems of child abuse, including sexual abuse, physical abuse, and emotional abuse, and child neglect in its geographical area.

b. A description of programs currently serving abused and neglected children and their families and of programs for the prevention of child abuse and neglect, including information on their impact, cost effectiveness, and sources of funding.

c. A continuum of programs and services necessary for a comprehensive approach to the prevention of all types of child abuse and neglect as well as a brief description of such programs and services.

d. A description, documentation, and priority ranking of local needs related to child abuse and neglect prevention based upon the continuum of programs and services.

e. A plan for steps to be taken in meeting identified needs, including the coordination and integration of services to avoid unnecessary duplication and cost, and for alternative funding strategies for meeting needs through the reallocation of existing resources, utilization of volunteers, contracting with local universities for services, and local government or private agency funding.

f. A description of barriers to the accomplishment of a comprehensive approach to the prevention of child abuse and neglect.

g. Recommendations for changes that can be accomplished only at the state program level or by legislative action. The district local plan of action shall be submitted to the interprogram task force by November 1, 1982.

(3) Funding and subsequent plans.—

(a) All budget requests submitted by the Department of Health and Rehabilitative Services, the Department of Education, or any other agency to the Legislature for funding of efforts for the prevention of child abuse and neglect shall be based on the state plan developed pursuant to this section.

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(b) At least biennially, the Department of Health and Rehabilitative Services at the state and district levels and the other agencies listed in paragraph (2)(a) shall readdress the plan and make necessary revisions. Such revisions shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than January 1, 1985, and by January 1 of alternate years thereafter.

Laws 1982, c. 82-62, § 1, eff. March 29, 1982.

¹ The word "or" was substituted for "and" by the division of statutory revision.

² The word "agencies" was inserted by the division of statutory revision.

Preamble (Laws 1982, c. 82-62):

"WHEREAS, in calendar year 1980 there were 71,522 children involved in reported cases of abuse and neglect representing a 192 percent increase of the reported number in fiscal year 1974-1975, and

"WHEREAS, of all abuse and neglect cases disposed over the last 2½ calendar years only 18 to 23 percent were required either voluntarily or involuntarily to receive counseling or services and only 9 percent of the cases were judicially handled, and

"WHEREAS, in 1979 the number of reported cases of sexual assault on children in Florida increased by 600 percent and national studies indicate that 1 in 10 females will be victims of sexual assault by relatives during childhood, and

"WHEREAS, 70 percent or more of all sex offenders have themselves been the victims of a sexual assault or have experienced a sexual trauma during their childhood, and

"WHEREAS, some studies on prison populations have indicated that as many as 80 to 90 percent of the inmates had been abused as children, and

"WHEREAS, almost 65 percent of the dependent children admitted to state hospitals in 1978 had histories of abuse and neglect, and

"WHEREAS, studies of dependency case files in Florida have indicated that 38 percent of those children who were abused or neglected have later known histories of status offense or delinquent behavior, and

"WHEREAS, national studies have shown that child abuse is the reason 1,500 children a year develop cerebral palsy as a result of brain damage and that many children become mentally retarded, and

"WHEREAS, the Legislature recognizes the costs associated with child abuse and neglect not only with regard to the victimized child and the child's family but also the hidden costs of child abuse in later generations, and

"WHEREAS, the ever increasing number of children who are abused heightens the concern of the Legislature about the need to save lives of children who are abused and neglected, to avoid the physical and emotional suffering caused by the abuse and neglect, and the need to reevaluate the approach the state has heretofore taken with regard to this immensely complex and important family problem. NOW, THEREFORE,

Library References

Infants § 12 et seq.
C.J.S. Infants §§ 56, 10, 32, 41, 43, 44, 95.

* * *

PRIVILEGED COMMUNICATIONS—SEXUAL ASSAULT VICTIMS AND COUNSELORS

CHAPTER 83-284

SENATE BILL NO. 568

An act relating to sexual assault counselor-victim privilege; creating s. 90.5035, Florida Statutes; providing definitions; providing that a victim has a privilege to refuse to disclose, and to prevent others from disclosing except with the victim's written permission, a

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confidential communication or record made during counseling related to sexual assault or sexual battery; providing who may claim the privilege; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 90.5035, Florida Statutes, is created to read:

90.5035 Sexual assault counselor-victim privilege.

(1) For purposes of this section:

(a) A "rape crisis center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families.

(b) A "sexual assault counselor" is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery.

(c) A "victim" is a person who consults a sexual assault counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault or sexual battery, an alleged sexual assault or sexual battery, or an attempted sexual assault or sexual battery.

(d) A communication between a sexual assault counselor and a victim is "confidential" if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the victim in the consultation, examination, or interview.

2. Those persons necessary for the transmission of the communication.

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3. Those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor is consulted.

(2) A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made by the victim to a sexual assault counselor or any record made in the course of advising, counseling, or assisting the victim. Such confidential communication or record may be disclosed only with the prior written consent of the victim. This privilege includes any advice given by the sexual assault counselor in the course of that relationship.

(3) The privilege may be claimed by:

(a) The victim or his attorney on his behalf.

(b) A guardian or conservator of the victim.

(c) The personal representative of a deceased victim.

(d) The sexual assault counselor, but only on behalf of the victim. The authority of a sexual assault counselor to claim the privilege is presumed in the absence of evidence to the contrary.

Section 2. This act shall take effect upon becoming a law.

Category		Citation
1.	Victim Compensation Program	28-5-100 et seq.
1.1	Responsible Agency	28-5-100
1.2	Eligible Claimants	28-5-103, 28-5-104(a)
1.3	Losses Covered	28-5-103(a)
1.4	Minimum and Maximum Award	
1.5	Required to Show Financial Need	
1.6	Required to Report Crime - Time Limit	28-5-106
1.7	Filing of Claim - Time Limit	28-5-106
1.8	Emergency Award	
1.9	Funding	28-5-108
2.	Restitution	17-14-1 et seq.
2.1	Sentencing Option	17-14-3; 42-8-35(7); 42-9-44
2.2	Mandatory Condition of Probation	
2.3	Mandatory Condition of Parole	
2.4	Mandatory Sentence	
2.5	Administration/Enforcement	17-14-13
3.	Escrow and Forfeiture of Offender Profits	17-14-30 et seq.
4.	Witness Fees	24-10-24
5.	Victim's Bill of Rights	
6.	Protection from Intimidation	
6.1	Crime Defined	16-10-93
6.2	Protective Orders	
7.	Victim Notification	
7.1	of Compensation Program	
7.2	of Witness Fees	
7.3	of Final Disposition	
7.4	of Plea Agreement	
7.5	of Cancelled Proceeding	
7.6	of Right to Participate in Sentencing Hearing	
7.7	of Parole Hearing	
7.8	of Release of Offender	
7.9	of Escape of Offender	
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	
8.2	Written Statement at Sentencing Hear-	

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Category		Citation
8.3	Testimony at Sentencing Hearing	
8.4	Written Statement at Parole Hearing	
8.5	Testimony at Parole Hearing	
8.6	Comment on Plea Bargain	
8.7	Participation in Other Proceedings	
9.	Employment Assistance	
9.1	Employer Intercession Services	
9.2	Criminal Sanction for Penalizing Employee-Witness	
10.	Return of Seized Property	17-5-50
11.	Victim-Witness Assistance	
11.1	Ombudsmen	
11.2	Support Attendants	
11.3	Funding for Local Victim-Witness Groups	
12.	Elderly Victims	
12.1	Sentencing for Offenses Against Elderly	
12.2	Abuse, Neglect, Exploitation - Criminal Penalty	
12.3	Abuse, Neglect, Exploitation - Reporting	
12.4	Abuse, Neglect, Exploitation - Protective Services	
13.	Sexual Assault Victims	
13.1	Payment for Medical Services	
13.2	Special Programs	
13.3	Child Sexual Assault Victim - Closed Proceedings	
13.4	Child Sexual Assault Victim - Admissible Depositions	
14.	Domestic Violence	
14.1	Protective Orders	19-13-1 et seq.
14.2	Domestic Violence Shelters	
14.3	Domestic Violence Reporting	
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Compensation of Persons for Injuries Sustained While Preventing Crime or Aiding Officers of the Law

28-5-100.

47-518 Compensation for damages resulting from attempts to prevent certain crimes; authority and procedure of Claims Advisory Board

(a) The Claims Advisory Board shall have authority to consider and make recommendations to the General Assembly concerning payment of compensation to innocent persons who sustain injury or property damage, or both, and to dependent heirs of innocent persons killed in attempting to prevent the commission of crime against the person of another or in aiding or attempting to aid officers of the law upon their request. In a particular case the board may appoint a special master to take testimony, supervise or conduct necessary investigations, and report to the board; but ultimate recommendation on any claim shall be made only by the board.

(b) The board shall provide by rules for proceedings before it; and such rules shall emphasize, to the greatest extent possible, informality of proceedings. No claimant shall be required to be represented or accompanied by an attorney.

(Acts 1967, p. 712.)

28-5-101.

47-519 Same; application for compensation

(a) Any person who is eligible for compensation under this part must give notice thereof in accordance with Part 2 of Article 4 of this chapter in order to have such claim brought before the General Assembly for action.

(b) Any such claimant shall also, prior to introduction of a resolution for compensation, submit all documents called for by the board, including reports from all physicians and surgeons who have treated or examined the victim and from hospitals that have admitted the victim in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the board, reports on the previous medical history of the victim, examination of the injured victim and a report thereon, or a report on the cause of death of the victim by an impartial medical expert would be of material aid in making its recommendation, the board shall call for the claimant to produce such reports and submit to such examination.

(Acts 1967, pp. 712, 713.)

28-5-102.

47-520 Same; standards for compensation

In making its recommendation, the board shall, insofar as practicable, formulate standards for uniform application in recommending compensation, taking into consideration rates and amounts of compensation payable for injuries or property damage and death under other laws of this state and of the United States.

(Acts 1967, pp. 712, 713.)

28-5-103.

47-521 Same; awarding compensation

(a) In any case in which a person is injured or sustains property damage or is killed by an incident for which compensation is authorized by this part, the board may recommend to the General Assembly payment of compensation:

(1) To or for the benefit of the injured person;

(2) In the case of personal injury of the victim, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of such injury;

(3) In the case of death of the victim, to or for the benefit of any one or more of the heirs at law of the victim, who at the time of the victim's demise were dependent upon him for over half of their support; or

(4) To or for the benefit of the owner of the damaged property.

(b) In making its recommendation to the General Assembly, the board shall:

(1) Consider a person to have intended an act, notwithstanding that by reason of age, insanity, drunkenness, or otherwise, he was legally incapable of forming a criminal intent;

(2) Consider all circumstances surrounding the claim, including, but not limited to, provocation, consent, or any other behavior of the victim which directly or indirectly contributed to his injury or death; the prior case or social history, if any, of the victim or claimant; any need for financial aid present; and any other relevant matters; and

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(3) Take into consideration any amounts received or receivable from any other source or sources by the victim or his dependents as a result of the incident or offense giving rise to the claim.

(c) Claims and recommendations may be made under this Code section regardless of whether or not any person is prosecuted or convicted of any offense arising out of such act.

(Acts 1967, pp. 712, 714.)

28-5-104.

47-522 Same; incidents and offenses to which law applies

47-524 Same; limitation on amount of compensation

(a) In no event shall the board recommend that compensation be awarded to:

(1) Any victim of a criminal act not provided for in Code Section 28-5-100;

(2) Any one who:

(A) Is a spouse, parent, grandparent, child (natural or adopted), grandchild, brother, sister, half brother, half sister, or parent of the spouse of the offender;

(B) Was, at the time of the personal injury or death of the victim, living with the offender as a member of his family or household or maintaining a sexual relationship, whether illicit or not, with such person or with any member of the family of such person;

(C) Violated a penal law of this state which violation caused or contributed to his injuries or death; or

(D) Was injured as a result of the operation of a motor vehicle, boat, or airplane, unless the same was used as a weapon in a deliberate attempt to run the victim down; or

(3) Any officer of the law injured in the performance of his official duties.

(b) No compensation shall be recommended by the board in an amount exceeding \$5,000.00 per claim.

(c) The board shall, in an advisory way only, recommend to the General Assembly payment of compensation and the amount thereof; and the General Assembly shall act on such recommendation in accordance with law and the rules of the House and Senate for action upon such resolutions.

(Acts 1967, pp. 712, 715.) (Acts 1967, pp. 712, 715.)

28-5-105.

47-523 Same; nature of the compensation

The General Assembly may by resolution appropriate money for payment of a claim for compensation upon

the recommendation of the board for:

(1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim; and

(2) Loss of earning power as a result of total or partial incapacity of such victim.

(Acts 1967, pp. 712, 715.)

28-5-106.

47-524 Same; limitations on awarding compensation

No resolution for the payment of compensation under this part shall be adopted unless notice of claim has been filed with the board within 18 months after the date of the personal injury or death, the claim is otherwise presented in accordance with law, and the personal injury or death was the result of an incident or offense for which compensation is authorized by this part and which had been reported to an officer of the law within five days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within five days of the time when a report could reasonably have been made.

(Acts 1967, pp. 712, 715.)

28-5-107.

47-525 Same; reports

The board shall prepare and transmit to the General Assembly, along with its recommendation on each claim, a report of its activities in connection therewith, including the name of the claimant, a brief description of the facts surrounding the claim, the amount of compensation recommended, and the board's reasons therefor.

(Acts 1967, pp. 712, 716.)

28-5-108.

47-526 Same; recovery from offender

Whenever an order for the payment of indemnification for personal injury or death or for damages to property is or has been made under this part, the State of Georgia shall, upon payment of the amount of the order, be subrogated to the cause of action of the person receiving indemnification under the order against the person or persons responsible for the injury or death or damages to property; and the Attorney General shall be authorized to bring an action against such person or persons for the amount of the damages sustained by the applicant. If an amount greater than that paid pursuant to the order for payment of indemnification is recovered and collected in any such action, the state, after deducting the expenses incurred, shall pay the balance to the person receiving indemnification under the order.

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CHAPTER 27-30. RESTITUTION

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Editorial Note to Ga. Code Ann.

This Chapter was added by the legislature as "a new Chapter 27-30." Former Chapter 27-30, which is based upon Acts 1953, Nov. Sess., p. 478, and which was unofficially codified as Chapter 37-30 by the publisher of the Ga. Code Ann., is renumbered as Chapter 27-30A of the Ga. Code Ann.

Library References

See Ga. Crim. Trial Prac., (2d ed.) § 26-18; Op. Atty. Gen. 67-404, U71-147.

27-3001 Policy

It is hereby declared to be the policy of this State that restitution by those found guilty of crimes to their victims is a primary concern of the criminal justice system.

(Acts 1980, p. 1382, eff. April 1, 1980.)

27-3001 [17-14-1] Policy

It is declared to be the policy of this state that restitution to their victims by those found guilty of crimes is a primary concern of the criminal justice system.

(Acts 1980, p. 1382.)

ANNOTATIONS

Cited. *Patterson v. State*, 161 Ga. App. 85, 289 S. E. 2d 270 (1982); *Shelton v. State*, 161 Ga. App. 524, 289 S. E. 2d 768 (1982); *McCannon v. State*, 161 Ga. App. 685, 288 S. E. 2d 663 (1982).

27-3002 Definitions

For the purposes of this Chapter, the following terms shall have the meanings herein ascribed to them unless the context clearly requires otherwise:

- The term "board" shall mean the State Board of Pardons and Paroles.
- The term "department" shall mean the Department of Offender Rehabilitation.
- The term "damages" shall mean all damages which a victim could recover against an offender in a civil action, including a wrongful death action, based on the same act or acts for which the offender is sentenced, except punitive damages and damages for pain and suffering, mental anguish, or loss of consortium.
- The term "offender" shall mean any natural person placed on probation under the First Offender Act, sentenced for any crime or any juvenile adjudged delinquent or unruly.
- The term "ordering authority" shall mean the court of competent jurisdiction, the State Board of Pardons and Paroles, or the Department of Offender Rehabilitation, or any combination thereof, as is required by the context.
- The term "relief" shall mean any suspended or probated sentence including probation imposed under the First Offender Act, any parole or other conditional release from

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incarceration, the awarding of earned time, the reduction in security status or the placement in prison rehabilitation programs, included, but not limited to, those in which the offender receives monetary compensation.

(g) The term "restitution" shall mean any property or lump sum of periodic payment ordered to be made by any offender to any victim by any ordering authority. Where the victim is a public corporation or governmental entity, or where the offender is a juvenile, restitution may also be in the form of services ordered to be performed by the offender.

(h) The term "restitution order" shall mean any order, decree, or judgment of an ordering authority which requires an offender to make restitution as a condition or term of any relief granted to an offender.

(i) The term "victim" shall mean any natural person or his personal representative, or any firm, co-partnership, association, public or private corporation, or governmental entity suffering damages caused by an offender's unlawful act.

(Acts 1980, pp. 1382, 1383, eff. April 1, 1980.)

27-3002 [17-14-2] Definitions

As used in this article, the term:

(1) "Board" means the State Board of Pardons and Paroles.

(2) "Damages" means all damages which a victim could recover against an offender in a civil action, including a wrongful death action, based on the same act or acts for which the offender is sentenced, except punitive damages and damages for pain and suffering, mental anguish, or loss of consortium.

(3) "Department" means the Department of Offender Rehabilitation.

(4) "Offender" means any natural person who has been placed on probation under Article 3 of Chapter 8 of Title 42 or sentenced for any crime or any juvenile who has been adjudged delinquent or unruly.

(5) "Ordering authority" means the court of competent jurisdiction, the State Board of Pardons and Paroles, the Department of Offender Rehabilitation, or any combination thereof, as is required by the context.

(6) "Relief" means any suspended or probated sentence, including probation imposed under Article 3 of Chapter 8 of Title 42; any parole or other conditional release from incarceration; the awarding of earned time allowances; reduction in security status; or placement in prison rehabilitation programs, including, but not limited to, those in which the offender receives monetary compensation.

(7) "Restitution" means any property, lump sum, or periodic payment ordered to be made by any offender to any victim by any ordering authority. Where the victim is a public corporation or governmental entity or where the offender is a juvenile, restitution may also be in the form of services ordered to be performed by the offender.

(8) "Restitution order" means any order, decree, or judgment of an ordering authority which requires an offender to make restitution as a condition or term of any relief granted to an offender.

(9) "Victim" means any natural person or his personal representative or any firm, partnership, association, public or private corporation, or governmental entity suffering damages caused by an offender's unlawful act.

(Acts 1980, pp. 1382, 1383.)

ANNOTATIONS

Cited. *Cannon v. State*, 246 Ga. 754, 272 S. E. 2d 709 (1980).

27-3003 Adults

The judge of any court of competent jurisdiction may order that an adult offender make restitution as a condition of any relief ordered by the court. The State Board of Pardons and Paroles may order that an adult offender make restitution as a condition of any relief ordered by the board. The Department of Offender Rehabilitation may order that an adult offender

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make restitution as a condition of any relief ordered by the department.

(Acts 1980, pp. 1382, 1384, eff. April 1, 1980.)

27-3003 [17-14-3] Adults

The judge of any court of competent jurisdiction may order that an adult offender make restitution as a condition of any relief ordered by the court. The board may order that an adult offender make restitution as a condition of any relief ordered by the board. The department may order that an adult offender make restitution as a condition of any relief ordered by the department.

(Acts 1980, pp. 1382, 1384.)

ANNOTATIONS

Indigency

In appeal from revocation of first offender probation, evidence of failure to pay fine and restitution authorized revocation. Appellant's claimed indigency did not render revocation violative of equal protection. *Bearden v. State*, 161 Ga. App. 640, 288 S. E. 2d 662 (1982). (But see *Wood v. Ga.*, 450 U.S. 261, 101 S. Ct. 1097, 67 L. Ed. 2d 220 (1981).)

27-3004 Pardons and paroles

Notwithstanding any provision of section 77-525 to the contrary, the State Board of Pardons and Paroles may grant parole prior to the completion of one-third of the sentence if restitution is to be ordered as a condition of the parole.

(Acts 1980, pp. 1382, 1384, eff. April 1, 1980.)

27-3004 [17-14-4] Pardons and paroles

Notwithstanding any provision of Code Section 42-9-45 to the contrary, the board may grant parole prior to the completion of one-third of the sentence if restitution is ordered as a condition of the parole.

(Acts 1980, pp. 1382, 1384.)

27-3005 Juveniles

(a) The juvenile courts are expressly directed to consider the strong policy of this State in favor of restitution but are not required to place the goal of restitution by juveniles above the goal of rehabilitation or treatment of delinquent or unruly juveniles. It is, however, declared to be the policy of this State to recognize that the goal of restitution is consistent with the goal of rehabilitation of delinquent or unruly juveniles and to seek to provide restitution in such cases.

(b) The juvenile courts are expressly authorized to order restitution as a condition or limitation of the probation of delinquent or unruly juveniles in the same manner as authorized by this Chapter for adult offenders.

(c) The juvenile courts are authorized to retain jurisdiction over a juvenile subject to a restitution order for a reasonable period after the majority of such a juvenile for purposes of ensuring compliance with the order.

(d) As an alternative to subsection (c), the juvenile courts are authorized to transfer to the superior courts, and the superior courts are authorized to accept, jurisdiction over enforcement of restitution orders against juveniles who have, since entry of the order, attained majority.

(Acts 1980, pp. 1382, 1384, eff. April 1, 1980.)

(a) *The juvenile courts are expressly directed to consider the strong policy of this state in favor of restitution but are not required to place the goal of restitution by juveniles above the goal of rehabilitation or treatment of delinquent or unruly juveniles. It is, however, declared to be the policy of this state to recognize that the goal of restitution is consistent with the goal of rehabilitation of delinquent or unruly juveniles and to seek to provide restitution in such cases.*

(b) *The juvenile courts are expressly authorized to order restitution as a condition or limitation of the probation of delinquent or unruly juveniles in the same manner as is authorized by this article for adult offenders.*

(c) *For purposes of insuring compliance with the order, the juvenile courts are authorized to retain jurisdiction over a juvenile subject to a restitution order for a reasonable period after the juvenile reaches the age of majority.*

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(d) *As an alternative to subsection (c) of this Code section, the juvenile courts are authorized to transfer to the superior courts, and the superior courts are authorized to accept, jurisdiction over enforcement of restitution orders against juveniles who, since entry of the order, have attained the age of majority.*

(Acts 1980, pp. 1382, 1384.)

27-3006 Past restitution considered

Where an offender has made total or partial restitution to a victim, the ordering authority shall consider the fact of such restitution in considering any case within its power.

(Acts 1980, pp. 1382, 1385, eff. April 1, 1980.)

27-3006 [17-14-6] Past restitution considered

Where an offender has made total or partial restitution to a victim, the ordering authority shall consider the fact of such restitution in considering any case within its power.

(Acts 1980, pp. 1382, 1385.)

ANNOTATIONS

Cited. *Chappell v. State*, case no. 64844.

27-3007 Voluntary restitution plans

Any offender may offer a restitution plan to the ordering authority. If a plan is offered, it shall be the duty of the ordering authority to consider the factors stated in section 27-3010, and to make such plan a part of a restitution order if acceptable to the ordering authority.

(Acts 1980, pp. 1382, 1385, eff. April 1, 1980.)

27-3007 [17-14-7] Voluntary restitution plans

Any offender may offer a restitution plan to the ordering authority. If a plan is offered, it shall be the duty of the ordering authority to consider the factors stated in Code Section 17-14-10 and to make the plan part of a restitution order if acceptable to the ordering authority.

(Acts 1980, pp. 1382, 1385.)

27-3008 Required findings

(a) In deciding any case subject to this Chapter, the ordering authority shall, before granting any relief, make a written finding either:

(1) That there are no victims to whom restitution should be made under the policy of this State; or

(2) That the circumstances of the case are such that no restitution order or plan is reasonably possible; or

(3) That the offender, in cooperation with the ordering authority, has developed and consented to a plan of restitution which shall be made a part of a restitution order; or

(4) That restitution will be ordered as a condition of the relief.

(b) The failure to make a finding as required by this section, however, shall not invalidate any order or other action of the ordering authority.

(Acts 1980, pp. 1382, 1385, eff. April 1, 1980.)

(a) *In deciding any case subject to this article, before granting any relief the ordering authority shall make a written finding either:*

(1) *That there are no victims to whom restitution should be made under the policy of this state;*

(2) *That the circumstances of the case are such that no restitution order or plan is reasonably possible;*

(3) *That the offender, in cooperation with the ordering authority, has developed and consented to a plan of restitution, which plan shall be made a part of a restitution order; or*

(4) *That restitution will be ordered as a condition of the relief.*

(b) *The failure to make a finding as required by this Code section, however, shall not invalidate any order or other action of the ordering authority.*

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ANNOTATIONS

Constitutionality

Appellant challenged imposition of restitution as condition of probation under Ch. 27-30 as unconstitutional. Although violation was committed prior to effective date of statute, since under § 27-2711, enacted in 1956, restitution was authorized condition of probation, enactment of Ch. 27-30 did not affect appellant's substantive rights, but is merely more detailed enactment regarding restitution. Appellant's rights had not changed. Sections 27-3008 thru 27-3010 contemplate hearing and specific written findings on damage issue, which was properly held by trial court. *Cannon v. State*, 246 Ga. 754, 272 S. E. 2d 709 (1980).

Hearing

Appellant was convicted of bribery and criminal use of article with altered identification mark. It was not error to deny motion for severance of offenses. Evidence was sufficient to support verdict. As restitution was made condition of partial suspension of sentence without post-trial pre-sentence hearing, portion of sentence imposing restitution was reversed and remanded for resentencing under requirements of §§ 27-3008, 27-3009, 27-3010. *Patterson v. State*, 161 Ga. App. 85, 289 S. E. 2d 270 (1982).

Defendant appealed conviction of secreting property to defraud another, § 26-1504. State sought to establish guilty knowledge by circumstantial evidence, including statements by defendant at time he was arrested and shortly thereafter. Although boat was kept on defendant's land in plain view, jury was authorized to find that defendant, acting in concert with other defendants, secreted boat. Evidence was sufficient to support verdict. Because factors enumerated in § 27-3010 were not considered, portion of sentence imposing restitution was reversed and remanded for hearing in compliance with Ch. 27-30. *Jarrett v. State*, 161 Ga. App. 285, 287 S. E. 2d 746 (1982).

27-3009 Restitution not to exceed damages

The amount of restitution ordered may be equal to or less than, but not more than, the victim's damages.

(Acts 1980, pp. 1382, 1385, eff. April 1, 1980.)

27-3009 [17-14-9] Restitution not to exceed damages

The amount of restitution ordered may be equal to or less than, but not more than, the victim's damages.

(Acts 1980, pp. 1382, 1385.)

ANNOTATIONS

Cited. *Cannon v. State*, 246 Ga. 754, 272 S. E. 2d 709 (1980).

Hearing

Appellant was convicted of bribery and criminal use of article with altered identification mark. It was not error to deny motion for severance of offenses. Evidence was sufficient to support verdict. As restitution was made condition of partial suspension of sentence without post-trial pre-sentence hearing, portion of sentence imposing restitution was reversed and remanded for resentencing under requirements of §§ 27-3008, 27-3009, 27-3010. *Patterson v. State*, 161 Ga. App. 85, 289 S. E. 2d 270 (1982).

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27-3010 Factors considered

In determining the nature and amount of restitution, the ordering authority shall consider:

- The present financial condition of the offender and his dependents;
 - The probable future earning capacity of the offender and his dependents;
 - The amount of damages;
 - The goal of restitution to the victim and the goal of rehabilitation of the offender;
 - Any restitution previously made;
 - The period of time during which the restitution order will be in effect;
 - Other appropriate factors as the ordering authority shall deem to be appropriate.
- (Acts 1980, pp. 1382, 1385, eff. April 1, 1980.)

27-3010 [17-14-10] Factors considered

In determining the nature and amount of restitution, the ordering authority shall consider:

- The present financial condition of the offender and his dependents;
- The probable future earning capacity of the offender and his dependents;

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- The amount of damages;
 - The goal of restitution to the victim and the goal of rehabilitation of the offender;
 - Any restitution previously made;
 - The period of time during which the restitution order will be in effect; and
 - Other appropriate factors which the ordering authority deems to be appropriate.
- (Acts 1980, pp. 1382, 1385.)

ANNOTATIONS

Constitutionality

Appellant challenged imposition of restitution as condition of probation under Ch. 27-30 as unconstitutional. Although violation was committed prior to effective date of statute, since under § 27-2711, enacted in 1956, restitution was authorized condition of probation, enactment of Ch. 27-30 did not affect appellant's substantive rights, but is merely more detailed enactment regarding restitution. Appellant's rights had not changed. Sections 27-3008 thru 27-3010 contemplate hearing and specific written findings on damage issue, which was properly held by trial court. *Cannon v. State*, 246 Ga. 754, 272 S. E. 2d 709 (1980).

Hearing

Appellant was convicted of bribery and criminal use of article with altered identification mark. It was not error to deny motion for severance of offenses. Evidence was sufficient to support verdict. As restitution was made condition of partial suspension of sentence without post-trial pre-sentence hearing, portion of sentence imposing restitution was reversed and remanded for resentencing under requirements of §§ 27-3008, 27-3009, 27-3010. *Patterson v. State*, 161 Ga. App. 85, 289 S. E. 2d 270 (1982).

Defendant appealed conviction of secreting property to defraud another, § 26-1504. State sought to establish guilty knowledge by circumstantial evidence, including statements by defendant at time he was arrested and shortly thereafter. Although boat was kept on defendant's land in plain view, jury was authorized to find that defendant, acting in concert with other defendants, secreted boat. Evidence was sufficient to support verdict. Because factors enumerated in § 27-3010 were not considered, portion of sentence imposing restitution was reversed and remanded for hearing in compliance with Ch. 27-30. *Jarrett v. State*, 161 Ga. App. 285, 287 S. E. 2d 746 (1982).

27-3011 Civil actions

An order for restitution shall not bar any civil action against the offender, but any payments made by an offender to a victim under an order for restitution may be set off against any judgment awarded to the victim in a civil action based on the same facts for which restitution was ordered. The fact of restitution or a restitution order under this Chapter shall not be placed before the jury on the issue of liability. If the amount of restitution made is in dispute and liability is established, the court shall order further appropriate proceedings to determine the amount of set-off.

(Acts 1980, pp. 1382, 1386, eff. April 1, 1980.)

27-3011 [17-14-11] Civil actions

An order for restitution shall not bar any civil action against the offender. However, any payments made by an offender to a victim under an order for restitution may be a setoff against any judgment awarded to the victim in a civil action based on the same facts for which restitution was ordered. The fact of restitution or a restitution order under this article shall not be placed before the jury on the issue of liability. If the amount of restitution made is in dispute and liability is established, the court shall order further appropriate proceedings to determine the amount of setoff.

(Acts 1980, pp. 1382, 1386.)

ANNOTATIONS

Cited. *Cannon v. State*, 246 Ga. 754, 272 S. E. 2d 709 (1980).

27-3012 Modification

The ordering authority shall retain jurisdiction to modify a restitution order at any time before the expiration of the relief ordered.

(Acts 1980, pp. 1382, 1386, eff. April 1, 1980.)

27-3012 [17-14-12] Modification

The ordering authority shall retain jurisdiction to modify a restitution order at any time before the expiration of the relief ordered.

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27-3013 Enforcement

- (a) A restitution order shall be enforceable as a civil judgment by execution.
- (b) If an offender willfully refuses to comply with a restitution order, the order, in the discretion of the court, may be enforced by attachment for contempt upon the application of the district attorney or the victim.
- (c) Failure to comply with a restitution order may be, in the discretion of the ordering authority, grounds to revoke or cancel the relief at any time the restitution order is in effect. Where the relief is earned time, the Department of Offender Rehabilitation may suspend the offender from earning earned time for a specified period of time.

(Acts 1980, pp. 1382, 1386, eff. April 1, 1980.)

27-3013 [17-14-13] Enforcement

- (a) A restitution order shall be enforceable as is a civil judgment by execution.
- (b) If an offender willfully refuses to comply with a restitution order, the order, in the discretion of the court, may be enforced by attachment for contempt, upon the application of the prosecuting attorney or the victim.
- (c) Failure to comply with a restitution order may, in the discretion of the ordering authority, be grounds to revoke or cancel the relief at any time the restitution order is in effect. Where the relief is earned time allowances, the department may suspend the offender from earning earned time allowances for a specified period of time.

(Acts 1980, pp. 1382, 1386.)

27-3014 Payments

Payments pursuant to an order for restitution shall be made to the clerk of court, or to any other person, for the benefit of the victim or victims, as the ordering authority shall order.

(Acts 1980, pp. 1382, 1387, eff. April 1, 1980.)

27-3014 [17-14-14] Payments

Payments pursuant to an order for restitution shall be made to the clerk of the court or to any other person, for the benefit of the victim or victims, as the ordering authority shall order.

(Acts 1980, pp. 1382, 1387.)

27-3015 Existing powers

This Chapter shall not be construed to limit or abrogate any existing power of any court or agency or board to place other conditions, limits, terms, rules, or regulations on any relief in the nature of suspension of sentence, probation, parole, pardon, or restoration of rights.

(Acts 1980, pp. 1382, 1387, eff. April 1, 1980.)

27-3015 [17-14-16] Existing powers

This article shall not be construed to limit or abrogate any power of any court, agency, or board to place other conditions, limits, terms, rules, or regulations on any relief in the nature of suspension of sentence, probation, parole, pardon, or restoration of rights.

27-3016 Peonage; denial of benefits because of poverty

- (a) Nothing in this Chapter shall authorize peonage, and this Chapter shall be construed and diligently administered to prevent peonage.
- (b) No offender shall be denied any benefit, relief, or privilege to which he might otherwise be entitled or eligible solely because he is financially unable and cannot become financially able to make restitution.

(Acts 1980, pp. 1382, 1387, eff. April 1, 1980.)

27-3016 [17-14-15] Peonage; denial of benefits because of poverty

- (a) Nothing in this article shall authorize peonage; and this article shall be construed and diligently administered to prevent peonage.
- (b) No offender shall be denied any benefit, relief, or privilege to which he might otherwise be entitled or eligible solely because he is financially unable and cannot become financially able to make restitution.

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27-2711 Conditions of probation

The court shall determine the terms and conditions of probation and may provide that the probationer shall:

- (7) Make reparation or restitution to any aggrieved person for the damage or loss caused by his offense, in an amount to be determined by the court. Unless otherwise provided by law, no reparation or restitution to any aggrieved person for the damage or loss caused by his offense shall be made if the amount is in dispute unless the same has been adjudicated;

* * *

77-517 Terms of parole; imposition of rules; penalty for violation

The board, upon placing a person on parole, shall specify in writing the terms and conditions thereof. A certified copy of the conditions shall be given to the parolee. Thereafter, a copy shall be sent to the clerk of the court in which the person was convicted. The board shall adopt general rules concerning the terms and conditions of parole and concerning what shall constitute a violation thereof and shall make special rules to govern particular cases. The rules, both general and special, may include, among other things, a requirement that the parolee shall not leave this state or any definite area in this state without the consent of the board; that he shall contribute to the support of his dependents to the best of his ability; that he shall make reparation or restitution for his crime; that he shall abandon evil associates and ways; and that he shall carry out the instructions of his parole supervisor, and, in general, so comport himself as his supervisor shall determine. A violation of the terms of parole may render the parolee liable to arrest and a return to a penal institution to serve out the term for which he was sentenced.

* * *

CHAPTER 27-34. DISTRIBUTION OF MONEYS RECEIVED AS RESULT OF COMMISSION OF CRIME

Sec.	
27-3401 [17-14-30]	Definitions
27-3401 [17-14-31]	Distribution of moneys received as a result of the commission of crime
27-3401 [17-14-32]	Penalties

Library References

See Brown's Ga. Forms, §§ 27-3401, 27-3401[1].

27-3401 Distribution of moneys received as a result of the commission of crime

- (a) As used in this section, "board" means the Board of Offender Rehabilitation.
- (b) (1) Every person, firm, corporation, partnership, association, or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this State, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions, or emotions regarding such crime, shall submit a copy of such contract to the board and pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives.

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(2) The board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by:

- (A) Such convicted person; or
- (B) Such accused person.

(3) Payments may be made pursuant to paragraph (2) only if such accused person is eventually convicted or enters a plea of guilty of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives.

(4) It shall be the duty of the victim, the victim's lawyer, or the victim's representative to notify the Board of Offender Rehabilitation within 30 days of filing any claim under this section.

(c) (1) It shall be unlawful for any person, firm, corporation, partnership, association, or other legal entity to fail to comply with the provisions of this section.

(2) Any person, firm, corporation, partnership, association, or other legal entity violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction of the violation, shall be punished as for a misdemeanor.

(3) Each day any such person, firm, corporation, partnership, association, or other legal entity continues in violation of the provisions of this section shall constitute a separate offense.

(d) The board, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county in which the crime was committed and in counties contiguous to such county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section.

(e) Upon dismissal of charges or acquittal of any accused person, the board shall immediately pay over to such accused person the moneys in the escrow account established on behalf of such accused person.

(f) Upon a showing by any convicted person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to this section, the board shall immediately pay over any moneys in the escrow account to such person or his legal representatives.

(g) For the purposes of this section, a person found not guilty by reason of insanity shall be deemed to be a convicted person.

(h) Whenever it is found that a person accused of a crime is unfit to proceed as a result of insanity because such person lacks capacity to understand the proceedings against him or to assist in his own defense, the board shall bring an action of interpleader to determine disposition of the escrow account.

(i) Any excess which remains in the escrow account or is deposited into the account after all money judgments have been satisfied shall be paid over into the treasury of this State as compensation for the establishment, administration, and execution of the provisions of this section.

(j) The board shall make payments from an escrow account to any person accused or convicted of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

(k) The board shall disburse said payments on a pro rata basis of all claims filed according to the amount of money in said escrow account comparable to the amount of each such claim. Said sums are not to be disbursed until all pending claims have been settled or reduced to judgment.

(l) Any action taken by any person accused or convicted or who enters a plea of guilty of a crime, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this State.

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27-3401 [17-14-30] Definitions

As used in this article, the term:

(1) "Board" means the Board of Offender Rehabilitation.

(2) "Convicted person" includes a person found not guilty by reason of insanity. (Acts 1979, p. 1262.)

27-3401 [17-14-31] Distribution of moneys received as a result of the commission of crime

(a)(1) Every person, firm, corporation, partnership, association, or other legal entity contracting with any person or with the representative or assignee of any person who has been accused or convicted of a crime in this state with respect to the reenactment of the crime by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment of any kind or with respect to the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime shall submit a copy of the contract to the board and shall pay over to the board any moneys which would otherwise, by the terms of the contract, be owing to the accused or convicted person or to his representatives.

(2) The board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by the accused or convicted person.

(3) Payments may be made pursuant to paragraph (2) of this subsection only if the accused person is eventually convicted or enters a plea of guilty of the crime and if the victim, within five years of the date of the establishment of the escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against the convicted or accused person or his representatives.

(4) It shall be the duty of the victim, the victim's attorney, or the victim's representative to notify the board within 30 days of the filing of any claim under this article.

(b) At least once every six months for five years from the date it receives such moneys, the board shall cause to have published a legal notice in newspapers of general circulation in the county in which the crime was committed and in counties contiguous to such county, advising victims of the crime that escrow moneys are available to satisfy money judgments pursuant to this Code section.

(c) Upon dismissal of charges or acquittal of any accused person, the board shall immediately pay over to the accused person the moneys in the escrow account established on behalf of the accused person.

(d) Upon a showing by any convicted person that five years have elapsed from the establishment of the escrow account and that no actions are pending against the convicted person pursuant to this Code section, the board shall immediately pay over any moneys in the escrow account to the person or his legal representatives.

(e) Whenever it is found that a person accused of a crime is unfit to proceed to trial as a result of insanity because the person lacks capacity to understand the proceedings against him or to assist in his own defense, the board shall bring an action of interpleader to determine the disposition of the escrow account.

(f) Any excess which remains in the escrow account or is deposited into the account after all money judgments have been satisfied shall be paid over into the state treasury as compensation for the establishment, administration, and execution of this article.

(g) The board shall make payments from the escrow account to any person accused of crime, upon the order of a court of competent jurisdiction, after a showing by the person that the moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against the person, including the appeals process.

(h) The board shall disburse payments from the escrow account on a pro rata basis of all claims filed, according to the amount of money in the escrow account as compared to the amount of each claim. The sums are not to be disbursed until all pending claims have been settled or reduced to judgment.

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(i) Any action taken by a person who is accused or convicted of a crime or who enters a plea of guilty, whether by way of execution of a power of attorney, creation of corporate entities; or otherwise, to defeat the purpose of this Code section shall be null and void as against the public policy of this state.

(Acts 1979, p. 1262.)

27-3401 [17-14-32] Penalties

(a) It shall be unlawful for any person, firm, corporation, partnership, association, or other legal entity to fail to comply with this article.

(b) Any person, firm, corporation, partnership, association, or other legal entity violating this article shall be guilty of a misdemeanor.

(c) Each day that a person, firm, corporation, partnership, association, or other legal entity continues in violation of this article shall constitute a separate offense.

(Acts 1979, p. 1262.)

Editorial Note to Ga. Code Ann.

Section 2 of this Act provides that: "This Act shall in no way affect any contracts in existence before the effective date of this Act."

* * *

38-801 [24-10-24] Subpoenas; witness fees

The witness fee shall be \$10.00 per diem, and execution shall be issued by the clerk upon affidavit of the witness to enforce payment thereof. The payment of fees shall not be demanded as a condition precedent to attendance; but, when a witness resides outside the county where the testimony is to be given, service of the subpoena, to be valid, must be accompanied by tender of the fee for one day's attendance plus mileage of 20¢ per mile for traveling expenses for going from and returning to his place of residence by the nearest practical route. Tender of fees and mileage may be made by United States currency or postal money order or by cashier's or certified check. When the subpoena is issued on behalf of the state, or an officer, agency, or political subdivision thereof, or a defendant in a criminal case, fees, and mileage need not be tendered.

(Acts 1966, p. 502; 1968, pp. 434, 435; 1968, p. 1200; 1978, pp. 925, 926; 1980, pp. 70, 71; 1980, pp. 439, 440.)

* * *

26-2313 Influencing witnesses

A person who, with intent to deter a witness from testifying freely, fully and truthfully to any matter pending in any court, or before a grand jury, communicates, directly or indirectly, to such witness any threat of injury or damage to the property or person of such witness or to the property or person of any relative of such witness or offers or delivers any benefit, reward or consideration to such witness or to a relative of such witness shall, upon conviction, be punished by imprisonment for not less than one nor more than five years.

(Acts 1975, p. 34.)

26-2313 [16-10-93] Influencing witnesses

A person who, with intent to deter a witness from testifying freely, fully, and truthfully to any matter pending in any court or before a grand jury, communicates, directly or indirectly, to such witness any threat of injury or damage to the property or person of the witness or to the property or person of any relative of the witness or who offers or delivers any benefit, reward, or consideration to such witness or to a relative of the witness shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.

* * *

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27-310.1 Disposition of articles; evidence; admissibility

(a) Upon application by the State or civil claimants, the court may, upon written notice to a defendant and a hearing when so requested by the defendant, order returned to the rightful owners any stolen, embezzled or other unlawfully obtained property, not constituting contraband. The notice to the defendant shall clearly specify that the defendant has the right to request a hearing as provided above. Photographs, video tapes, or other identification or analysis of the property involved, duly identified in writing by the law enforcement officer originally taking custody of the property as accurately representing such property, shall be admissible at trial in lieu of the original property. In the case of unknown, unapprehended or defendants wilfully absent from the jurisdiction, the court shall have discretion to appoint a guardian ad litem to represent the interest of such unknown or absent defendants.

(b) Statements made by the defendant or a person representing the defendant shall not be admissible for use against the defendant at trial.

(Acts 1978, p. 2260; 1979, p. 761, eff. July 1, 1979.)

27-310.1 [17-5-50] Return of articles

(a) The clerk or person having charge of the property section for any police department, sheriff's office, or other law enforcement agency in this state shall enter in a suitable book a description of every article of property alleged to be stolen, embezzled, or otherwise unlawfully obtained and brought into the office or taken from the person of a prisoner and shall attach a number to each article and make a corresponding entry thereof.

(b) (1) Any person claiming ownership of such allegedly stolen, embezzled, or otherwise unlawfully obtained property may make application to the law enforcement agency for the return of such property. Upon such an application being filed, the clerk or person in charge of the property section shall serve upon the person from whom custody of the property was taken a copy of such application. Such person from whom custody of the property was taken shall have a reasonable opportunity to claim ownership of such property and to request a hearing on forms provided by the person in charge of the property section.

(2) If the person from whom custody of the property was taken fails to assert a claim to such property, upon any applicant furnishing satisfactory proof of ownership of such property and presentation of proper personal identification, the person in charge of the property section may deliver such property to the applicant. The person to whom property is delivered shall sign, under penalty of false swearing, a declaration of ownership, which shall be retained by the person in charge of the property section. Such declaration, absent any other proof of ownership, shall be deemed satisfactory proof of ownership for the purposes of this Code section; provided, however, that, in the case of motor vehicles, trailers, tractors, or motorcycles which are required to be registered with the state revenue commissioner, any such stolen vehicle shall be returned to the person evidencing ownership of such vehicle through a certificate of title, tag receipt, bill of sale, or other such evidence. Prior to such delivery such person in charge of the property section shall make and retain a complete photographic record of such property. Such delivery shall be without prejudice to the state or to the person from whom custody of the property was taken or to any other person who may have a claim against the property.

(3) If the person from whom custody of the property was taken asserts a claim to such property and requests a hearing, the court which examines the charge against the person accused of stealing, embezzling, or otherwise unlawfully obtaining the property, or the court before whom the trial is had for stealing, embezzling, or otherwise unlawfully obtaining the property shall conduct the hearing to determine the ownership of such property.

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(4) The provisions of this subsection shall not apply to any contraband or property subject to forfeiture under any provision of law.

(c) Photographs, video tapes, or other identification or analysis of the property involved, duly identified in writing by the law enforcement officer originally taking custody of the property as accurately representing such property, shall be admissible at trial in lieu of the original property.

(d) In the case of unknown or unapprehended defendants or defendants willfully absent from the jurisdiction, the court shall have discretion to appoint a guardian ad litem to represent the interest of the unknown or absent defendants.

(e) Statements made by the defendant or a person representing the defendant at a hearing provided for in subsection (b) of this Code section shall not be admissible for use against the defendant at trial.

(Acts 1978, p. 2260; 1979, p. 761; 1982, p. 2336.)

* * *

CHAPTER 53-7. PROCEDURES FOR PREVENTION OF FAMILY VIOLENCE

Cross References to Ga. Code Ann.

Arrest without warrant where officer has reason to believe that act of family violence has been committed, see § 27-207.

53-701 [19-13-1] "Family violence" defined

As used in this article, the term "family violence" means the occurrence of one or more of the following acts between spouses, parents and children, or other persons related by consanguinity or affinity and living in the same household:

- (1) Any felony; or
- (2) Commission of offenses of battery, assault, criminal damage to property, unlawful restraint, or criminal trespass.

The term "family violence" shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.

(Acts 1981, p. 880.)

53-702 [19-13-2] Jurisdiction

The superior court of the county where the respondent resides shall have jurisdiction over all proceedings under this article.

(Acts 1981, pp. 880, 881.)

53-703 [19-13-3] Petition; hearing

(a) A person who is not a minor may seek relief under this article by filing a petition with the superior court alleging one or more acts of family violence. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition. The fee for filing a petition is \$16.00.

(b) Upon the filing of a verified petition in which the petitioner alleges a substantial likelihood of immediate danger of family violence, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from violence.

(c) Within ten days of the filing of the petition under this article, a hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases. If a hearing is not held within ten days, the petition shall stand dismissed unless the parties otherwise agree.

(Acts 1981, pp. 880, 881.)

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53-704 Protective orders and consent agreements

(a) The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of family violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a spouse possession of the residence or household of the parties and exclude the other spouse from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from harassing or interfering with the other;
- (10) Award costs and attorney's fees to either party; and
- (11) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.

(b) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.

(c) Any such orders granted under this section shall not remain in effect for more than six months. (Acts 1981, pp. 880, 881; 1982, pp. 2300, 2301, eff. July 1, 1982.)

53-704 [19-13-4] Protective orders and consent agreements

(a) The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of family violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a spouse possession of the residence or household of the parties and exclude the other spouse from the residence or household;
- (3) Require a party to provide suitable alternate housing for a spouse and his or her children;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from harassing or interfering with the other;
- (10) Award costs and attorney's fees to either party; and
- (11) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.

(b) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.

(c) Any such orders granted under this Code section shall not remain in effect for more than six months.

(Acts 1981, pp. 880, 881; 1982, pp. 2300, 2302.)

Editorial Note to Ga. Code Ann.

Acts 1982, pp. 2300, 2301, rewrote subsection (a).

53-705 [19-13-5] Supplemental nature of Chapter

The remedies provided by this article are not exclusive but are additional to any other remedies provided by law.

(Acts 1981, pp. 880, 882.)

Category	Citation
1. Victim Compensation Program	351-1 et seq.
1.1 Responsible Agency	351-11
1.2 Eligible Claimants	351-31, 351-34, 351-51
1.3 Losses Covered	351-33, 351-52
1.4 Minimum and Maximum Award	351-62(b)
1.5 Required to Show Financial Need	
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1.7 Filing of Claim - Time Limit	351-62(a)
1.8 Emergency Award	
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2. Restitution	
2.1 Sentencing Option	706-605(e)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	835-8 (for material witness held in custody)
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	710-1071, 710-1072, 710-1072.2; 707-764(1)
6.2 Protective Orders	28-101 (witness security and protection program)
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
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9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	621-10.5
10. Return of Seized Property	52-13, 52-14
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	706-662(5)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	349C-1 et seq.
12.4 Abuse, Neglect, Exploitation - Protective Services	349C-3
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	709-906 et seq.
14.1 Protective Orders	586-1 et seq.
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	349C-8 (reports of abuse of elderly)
15.4 Sexual Assault Counselor Privilege	

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CHAPTER 351 CRIMINAL INJURIES COMPENSATION

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SECTION

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- 351-70 ANNUAL REPORT

§351-1 Purpose. The purpose of this chapter is to aid victims of criminal acts, by providing compensation for victims of certain crimes or dependents of deceased victims, and for indemnification of private citizens for personal injury or property damage suffered in prevention of crime or apprehension of a criminal. [L 1967, c 226, pt of §1]

Case Notes

In light of its purpose, chapter should be construed liberally in determining eligibility of applicants. 55 H. 514, 523 P.2d 311.

§351-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child;

"Commission" means the criminal injuries compensation commission established by this chapter;

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"Dependents" mean such relatives of a deceased victim who were wholly or partially dependent upon his income at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted and includes the child of the victim born after his death;

"Injury" means actual bodily harm and, in respect of a victim, includes pregnancy and mental or nervous shock; and "Injured" has a corresponding meaning;

"Private citizen" means any natural person other than a policeman who is actively engaged in the performance of his official duties;

"Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents;

"Victim" means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State which is within the description of any of the crimes specified in section 351-32 of this chapter. [L 1967, c 226, pt of §1; HRS §351-2; am L 1972, c 2, §13 and c 61, §1a]

PART II. ESTABLISHMENT OF COMMISSION

§351-11 Criminal injuries compensation commission. There shall be a criminal injuries compensation commission which shall be composed of three members to be appointed and be removable in the manner prescribed by section 26-34. One member of the commission shall be an attorney who has been admitted to practice before the supreme court of the State for at least five years. No officer or employee of the State or any political subdivision thereof shall be eligible for appointment to the commission. The commission is placed within the department of social services and housing for administrative purposes. [L 1967, c 226, pt of §1; HRS §351-11; am L 1970, c 105, §5]

§351-12 Tenure and compensation of members. The term of office of each member of the criminal injuries compensation commission shall be four years or until his successor is appointed except that (1) the terms of office of the members first taking office shall expire as designated by the governor at the time of the appointment, one on December 31, 1968, one on December 31, 1969, and one on December 31, 1970; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of the term. Each member of the commission shall be eligible for reappointment, subject to section 26-34. A vacancy in the commission shall not affect its powers. If any member of the commission is unable to act because of absence, illness, or other sufficient cause, the governor may make a temporary appointment, and such appointee shall have all the powers and duties of a regular member of the commission for the period of his appointment.

Each member of the commission except the chairman shall be compensated at the rate of \$50 per day for each day's actual attendance to his duties, provided such compensation shall not exceed a maximum of \$6,600 per year. The chairman shall be compensated at the rate of \$55 per day for each day's actual attendance to his duties, provided such compensation shall not exceed a maximum of \$7,200 per year. The members of the commission shall be paid their necessary travelling and subsistence expenses incurred in the discharge of their duties. [L 1967, c 226, pt of §1]

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§351-13 Powers and procedures of commission. Upon an application made to the criminal injuries compensation commission under this chapter, the commission shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant. The commission may hold such hearings, sit and act at such times and places, and take such testimony as the commission may deem advisable. Any two members shall constitute a quorum; but in such case the concurring vote of the two members shall be necessary to take any action. Any member of the commission may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have such powers of subpoena and compulsion of attendance of witnesses and production of documents and of examination of witnesses as are conferred upon a circuit court. Subpoenas shall be issued under the signature of the chairman. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required may, upon the application of the commission, enforce the attendance and testimony of any witness and the production of any document so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts, and shall be payable from funds appropriated for expenses of administration. [L 1967, c 226, pt of §1; HRS. §351-13; am L 1975, c 138, §1]

§351-14 Hearings and evidence. Where any application is made to the criminal injuries compensation commission under this chapter, the applicant and the commission's legal adviser shall be entitled to appear and be heard. Any other person may appear and be heard who satisfied the commission that he has a substantial interest in the proceedings. In any case in which the person entitled to make an application is a child, the application may be made on his behalf by any person acting as his parent or guardian. In any case in which the person entitled to make an application is mentally defective, the application may be made on his behalf by his guardian or such other individual authorized to administer his estate.

Where under this chapter any person is entitled to appear and be heard by the commission, that person may appear in person or by his attorney. All hearings shall be open to the public unless in a particular case the commission determines that the hearing, or a portion thereof, should be held in private, having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

Every person appearing under this section shall have the right to produce evidence and to cross-examine witnesses. The commission may receive in evidence any statement, document, information, or matter that may in the opinion of the commission contribute to its functions under this chapter, whether or not such statement, document, information, or matter would be admissible in a court of law.

If any person has been convicted of any offense with respect to an act or omission on which a claim under this chapter is based, proof of that conviction shall, unless an appeal against the conviction or a petition for a rehearing in respect of the charge is pending or a new trial or rehearing has been ordered, be taken as conclusive evidence that the offense has been committed. [L 1967, c 226, pt of §1]

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§351-15 Medical examination. The criminal injuries compensation commission may appoint an impartial licensed physician to examine any person making application under this chapter, and the fees for the examination shall be paid from funds appropriated for expenses of administration. [L 1967, c 226, pt of §1]

§351-16 Attorneys' fees. The criminal injuries compensation commission may, as a part of any order entered under this chapter, determine and allow reasonable attorneys' fees, which if the award of compensation is more than \$1,000 shall not exceed fifteen per cent of the award, to be paid out of but not in addition to the award, to the attorneys representing the applicant, provided that the amount of the attorneys' fees shall not, in any event, exceed the award of compensation remaining after deducting that portion thereof for expenses actually incurred by the claimant.

Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than \$2,000. [L 1967, c 226, pt of §1]

§351-17 Reconsideration by commission; judicial review. (a) The criminal injuries compensation commission may, at any time, on its own motion or on the application of any person aggrieved by an order or decision of the commission, reconsider the order or decision and revoke, confirm, or vary the order or decision, based upon the findings of the commission.

(b) Any person aggrieved by an order or decision of the criminal injuries compensation commission on the sole ground that the order or decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the supreme court subject to chapter 602, provided the appeal is filed within thirty days after service of an original or a certified copy of such order or decision. Except as otherwise provided in this section, orders and decisions of the commission shall be conclusive and not subject to judicial review. [am L 1979, c 111, §15]

§351-31 Eligibility for compensation. (a) In the event any private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the victim; or
- (2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death; or
- (3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; or
- (4) To a parent of an adult deceased victim, or to an adult son or daughter of a deceased victim, where the parent, or adult son or daughter, has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the victim's injury and death.

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(c) In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused his injury or death and the commission shall reduce the amount of compensation in proportion to the amount of responsibility for the crime which caused the victim's injury or death; provided that if such proportion is greater than the responsibility of the person who committed the act or omission or in the case of more than one person, the aggregate responsibility of such persons because of whom compensation is sought, the commission shall not award any compensation to such victim.

(d) An order may be made under this section whether or not any person is prosecuted for or convicted of a crime arising out of an act or omission described in subsection (a), provided an arrest has been made or such act or omission has been reported to the police without undue delay. No order may be made under this section unless the commission finds that:

(1) The act or omission did occur; and

(2) The injury or death of the victim resulted from the act or omission. Upon application from either the prosecuting attorney or the chief of police of the appropriate county, the commission may suspend proceedings under this chapter for such period as it deems desirable on the ground that a prosecution for a crime arising out of the act or omission has been commenced or is imminent, or that release of the investigation report would be detrimental to the public interest. [L 1967, c 226, pt of §1; HRS §351-31; am L 1972, c 61, §1c; am L 1975, c 138, §2]

Attorney General Opinions

Subsection (a)(3) cited in holding that dependents stand in shoes of victim and are entitled to no more than \$10,000 in aggregate amount. Att. Gen. Op. 69-22.

§351-32 Violent crimes. (a) The crimes to which part III of this chapter applies are the following and no other:

- (1) Murder (Hawaii Penal Code, section 707-701),
- (2) Manslaughter (Hawaii Penal Code, section 707-702),
- (3) Assault in the first degree (Hawaii Penal Code, section 707-710),
- (4) Assault in the second degree (Hawaii Penal Code, section 707-711),
- (5) Assault in the third degree (Hawaii Penal Code, section 707-712),
- (6) Kidnapping (Hawaii Penal Code, section 707-720),
- (7) Rape in the first degree (Hawaii Penal Code, section 707-730),
- (8) Rape in the second degree (Hawaii Penal Code, section 707-731),
- (9) Rape in the third degree (Hawaii Penal Code, section 707-732),
- (10) Sodomy in the first degree (Hawaii Penal Code, section 707-733),
- (11) Sodomy in the second degree (Hawaii Penal Code, section 707-734),
- (12) Sodomy in the third degree (Hawaii Penal Code, section 707-735),
- (13) Sexual abuse in the first degree (Hawaii Penal Code, section 707-736), and
- (14) Sexual abuse in the second degree (Hawaii Penal Code, section 707-737).

(b) For the purposes of this part, the operation of a motor vehicle, boat,

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or aircraft that results in an injury or death shall not constitute a crime, unless the injuries were intentionally inflicted through the use of such vehicle, boat, or aircraft. [L 1967, c 226, pt of §1; HRS §351-32; am L 1973, c 85, §1; am L 1975, c 138, §3]

§351-33 Award of compensation. The criminal injuries compensation commission may order the payment of compensation under this part for:

- (1) Expenses actually and reasonably incurred as a result of the injury or death of the victim;
- (2) Loss to the victim of earning power as a result of total or partial incapacity;
- (3) Pecuniary loss to the dependents of the deceased victim;
- (4) Pain and suffering to the victim; and
- (5) Any other pecuniary loss directly resulting from the injury or death of the victim which the commission determines to be reasonable and proper. [L 1967, c 226, pt of §1]

§351-34 Relationship to offender. No compensation shall be awarded, except for expenses specified in section 351-33(1), if the victim:

- (1) Is a relative of the offender; or
- (2) Was at the time of his injury or death living with the offender as spouse or as a member of the offender's household. [L 1967, c 226, pt of §1]

§351-35 Recovery from offender. Whenever any person is convicted of an offense that includes any crime enumerated in section 351-32 and an order or the payment of compensation is or has been made under this part for injury or death resulting from the act or omission constituting such offense, the criminal injuries compensation commission may institute a derivative action against the person and against any person liable at law on his behalf, in the name of the victim or such of his dependents as have been awarded compensation under this part in the circuit court of the circuit in which any such person resides or is found, for such damages as may be recoverable at common law by the victim or such dependents without reference to the payment of compensation under this part. The court shall have jurisdiction to hear, determine, and render judgment in any such action. The time from the occurrence of the act or omission until conviction of the offense and, thereafter, as long as the offender is in confinement for conviction of the offense, shall not constitute any part of the time limited for the commencement of the action by the commission under the applicable statute of limitations. Any recovery in the action shall belong to the State, provided that the commission shall amend its order of compensation to provide for the payment of any portion of the recovery in excess of the amount of compensation prescribed in the order to any of the persons entitled to receive compensation under section 351-31 in such proportions and upon such terms as the commission shall deem appropriate. If the legislature fails to appropriate funds to pay all or any part of the award of payment made by the commission and there is a recovery of the money from the offender, the commission shall pay all of such recovery to the claimant or such portion thereof, to the claimant as to the commission appears just and equitable, but in no case shall any claimant be given an award in excess of both the recovery and the award. [L 1967, c 226, pt of §1]

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§351-51 Eligibility for compensation. In the event a private citizen incurs injury or property damage in preventing the commission of a crime within the State, in apprehending a person who has committed a crime within the State, or in materially assisting a peace officer who is engaged in the prevention or attempted prevention of such a crime or the apprehension or attempted apprehension of such a person, the criminal injuries compensation commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the private citizen; or
- (2) To any person responsible for the maintenance of the private citizen, where that person has suffered pecuniary loss or incurred expenses as a result of the private citizen's injury. [L 1967, c 226, pt of §1]

§351-52 Award of compensation. The criminal injuries compensation commission may order the payment of compensation under this part for:

- (1) Expenses actually and reasonably incurred as a result of the injury of the private citizen;
- (2) Pain and suffering to the private citizen;
- (3) Loss to the private citizen of earning power as a result of total or partial incapacity; and
- (4) Pecuniary loss to the private citizen directly resulting from damage to his property. [L 1967, c 226, pt of §1]

PART V. GENERAL PROVISIONS

§351-61 Terms of order. Except as otherwise provided in this chapter, any order for the payment of compensation under this chapter may be made on such terms as the criminal injuries compensation commission deems appropriate. Without limiting the generality of the preceding sentence, the order may provide for apportionment of the compensation, for the holding of the compensation or any part thereof in trust, for the payment of the compensation in a lump sum or periodic installments, and for the payment of compensation for hospital, medical, funeral, or burial expenses directly to the person who has provided such services. All such orders shall contain words clearly informing the claimant that all awards and orders for payments under this chapter are subject to the making of an appropriation by the legislature to pay the claim, except as otherwise provided in section 351-62.5. [L 1967, c 226, pt of §1; HRS §351-61; am L 1972, c 61, §1d]

§351-62 Limitations upon award of compensation. (a) No order for the payment of compensation shall be made under this chapter unless the application has been made within eighteen months after the date of injury, death, or property damage.

(b) No compensation shall be awarded under this chapter in an amount in excess of \$10,000. [L 1967, c 226, pt of §1]

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§351-62.5 Criminal injuries compensation fund; when payments authorized. (a) There is established a criminal injuries compensation fund from which the criminal injuries compensation commission may make payments as provided in subsection (b). The director of finance shall be custodian of the fund, and all payments therefrom shall be paid by him upon orders by the commission.

(b) Where the criminal injuries compensation commission has made an award pursuant to this chapter, the commission shall make such payments to or on behalf of the victim, or to or for the benefit of one or more of the dependents of a deceased victim, or to or for the benefit of other persons who have suffered pecuniary loss or incurred expenses on account of hospital, medical, funeral, or burial expenses as a result of the victim's injury or death. Payments made pursuant to this section shall not exceed the total amount of the award.

(c) The amount appropriated under section 351-70 shall be redeposited into the criminal injuries compensation fund established by this section, to be applied to making other payments as authorized by the criminal injuries compensation commission. [L 1972, c 61, §1f; am L 1974, c 204, §1]

§351-63 Recovery from collateral source. (a) In determining the amount of compensation to be awarded under this chapter, the criminal injuries compensation commission shall deduct amounts or benefits received or to be received from any source, whether from the offender or from any person on behalf of the offender, or from public or private funds, and which amounts or benefits result from or are in any manner, directly or indirectly, attributable to the injury or death which gave rise to the award; provided that no deduction shall be made for death benefits received or to be received under any insurance policy covering the life of a deceased victim.

(b) Where compensation is awarded under this chapter and the person receiving same also receives any sum required to be, and that has not been deducted under subsection (a), he shall refund to the State the lesser of the sum or the amount of the compensation paid to him under this chapter. [L 1967, c 226, pt of §1; HRS §351-63; am L 1972, c 61, §1e]

Attorney General Opinions

Amount of welfare payments made to victim for food and necessities during disability is not deductible from compensation awarded. Att. Gen. Op. 69-27.

§351-64 No double recovery. Application may be made by any eligible person for compensation under both parts III and IV of this chapter, but no order shall have the effect of compensating any person more than once for any loss, expense, or other matter compensable under this chapter. [L 1967, c 226, pt of §1]

§351-65 Legal adviser. The attorney general shall serve as legal adviser to the criminal injuries compensation commission. [L 1967, c 226, pt of §1]

§351-66 Exemption from execution. No compensation payable under this chapter shall, prior to actual receipt thereof by the person or beneficiary entitled thereto, or their legal representatives, be assignable or subject to execution, garnishment, attachment, or other process whatsoever, including process to satisfy an order or judgment for support or alimony. [L 1967, c 226, pt of §1]

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§351-67 Survival and abatement. The rights to compensation created by this chapter are personal and shall not survive the death of the person or beneficiary entitled thereto, provided that if such death occurs after an application for compensation has been filed with the criminal injuries compensation commission, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate. [L 1967, c 226, pt of §1]

§351-68 Rule-making powers. In the performance of its functions, the criminal injuries compensation commission may adopt, amend, and repeal rules and regulations, not inconsistent with this chapter, prescribing the procedures to be followed in the filing of applications and the proceedings under this chapter and such other matters as the commission deems appropriate. [L 1967, c 226, pt of §1]

Cross References

Rulemaking, see chapter 91.

§351-69 Commission staff. Supervisory, administrative, and clerical personnel necessary for the efficient functioning of the criminal injuries compensation commission shall be appointed as provided in section 26-35. [L 1967, c 226, pt of §1]

§351-70 Annual report. The criminal injuries compensation commission shall transmit annually to the governor and to the director of finance, at least thirty days prior to the convening of the legislature a report of its activities under this chapter including a brief description of the facts in each case, and the amount, if any, of compensation awarded, and the names of attorneys and health care providers where they are the applicants. The director of finance shall, within five 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 criminal injuries compensation fund for the compensation awarded. The criminal injuries compensation commission shall provide upon request of the governor, the director of finance, or the legislature, the relevant data, including the names of all applicants for compensation, under this chapter. [L 1967, c 226, pt of §1; HRS §351-70; am L 1973, c 178, §2; am L 1974, c 204, §2; am L 1979, c 77, §1]

CHAPTER 352 HAWAII YOUTH CORRECTIONAL FACILITY

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§706-605 Authorized disposition of convicted defendants. (1) Except as provided in section 706-606 and subject to the applicable provisions of this Code, the court may suspend the imposition of sentence on a person who has been convicted of a crime, may order the person to be committed in lieu of sentence in accordance with section 706-607, or may sentence the person as follows:

(e) To make restitution or reparation to the victim or victims of the person's crime in an amount the person can afford to pay, for loss or damage caused thereby in addition to paragraph (a), (b), (c), (d), or (f) of this subsection (1);

§835-8 Material witness order; witness fee. A witness held in the custody of the chief of police as a result of a material witness order must be paid the sum of twenty dollars per day for each day of confinement in such custody. Such compensation is a county charge and is payable upon release of such material witness from custody or, in the discretion of the court, at any designated times or intervals during the confinement as the court may deem appropriate. [L 1971, c 214, pt of §1; HRS §718-8; renumbered L 1972, c 9, pt of §1]

[§28-101] Witness security and protection. (a) The attorney general shall establish a statewide witness program through which he may fund or pro-

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vide for the security and protection of a government witness or a potential government witness in an official proceeding or investigation where the attorney general determines that an offense such as those described in sections 710-1071 (intimidating a witness), 710-1072 (tampering with a witness), or 710-1072.2 (retaliating against a witness) is likely to be committed or which involves great public interest. The attorney general may also fund or provide for the security and protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered. In determining whether such security and protection or funds are to be provided, the attorney general shall give greatest priority to official proceedings or investigations involving pending or potential organized crime, racketeering activity or career criminal prosecutions.

(b) In connection with the security and protection of a witness, a potential witness, or an immediate family member or close associate of a witness, the attorney general may fund or take any action he determines to be necessary to protect such person from bodily injury, or to assure his health, safety, and welfare, for as long as, in the judgment of the attorney general, such danger exists.

(c) Any county or state prosecuting attorney or law enforcement agency may request the security and protection provided by the attorney general or funding from the attorney general for the purpose of implementing county witness security and protection, or for contracting or arranging for security provided by other state or federal agencies such as the United States Marshals Service. Requests shall be made and approved in a timely and equitable manner as established by the attorney general.

(d) The attorney general may condition the provision of security and protection or funding upon a county matching basis or reimbursement in whole or in part by a county government to the State for the cost of such witness security and protection or for the funds granted. Such reimbursement shall be appropriate when security and protection are provided or funding is granted on an emergency basis where the provision of such protection is primarily a county responsibility.

(e) The county prosecuting attorneys, the county police departments, and all other law enforcement agencies in the State shall cooperate with the attorney general to implement a statewide witness security program. Appropriations for the purposes authorized by this section shall be made to and administered by the attorney general, who may also receive and use gifts, moneys, services, or assistance from any private source to implement the purposes of this section. [L 1982, c 231, §1]

* * *

§710-1071 Intimidating a witness. (1) A person commits the offense of intimidating a witness if he uses force upon or a threat directed to a witness or

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a person he believes is about to be called as a witness in any official proceeding, with intent to:

- (a) Influence the testimony of that person;
- (b) Induce that person to avoid legal process summoning him to testify; or
- (c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

§710-1071 Intimidating a witness. * * *

(2) "Threat" as used in this section means any threat proscribed by section 707-764(1).

* * *

(3) Intimidating a witness is a class C felony. [L 1972, c 9, pt of §1]

§710-1072 Tampering with a witness. (1) A person commits the offense of tampering with a witness if he intentionally engages in conduct to induce a witness or a person he believes is about to be called as a witness in any official proceeding to:

- (a) Testify falsely or withhold any testimony which he is not privileged to withhold; or
 - (b) Absent himself from any official proceeding to which he has been legally summoned.
- (2) Tampering with a witness is a misdemeanor. [L 1972, c 9, pt of §1]

[§710-1072.2] Retaliating against a witness. (1) A person commits the offense of retaliating against a witness if he uses force upon or threatens a witness or another person or damages the property of a witness or another person because of the attendance of the witness, or any testimony given, or any record, document, or other object produced, by the witness in an official proceeding.

(2) "Threaten" as used in this section means any threat proscribed by sections 707-764(1) and 707-764(2).

(3) Retaliating against a witness is a class C felony. [L 1981, c 156, pt of §1]

[§707-764] Extortion. A person commits extortion if he does any of the following:

(1) Obtains, or exerts control over, the property or services of another with intent to deprive him of the property or services by threatening by word or conduct to:

- (a) Cause bodily injury in the future to the person threatened or to any other person; or
- (b) Cause damage to property; or
- (c) Subject the person threatened or any other person to physical confinement or restraint; or
- (d) Commit a penal offense; or
- (e) Accuse some person of any offense or cause a penal charge to be instituted against some person; or
- (f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
- (g) Reveal any information sought to be concealed by the person threatened or any other person; or
- (h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

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- (i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action; or
- (j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the defendant purports to represent; or
- (k) Do any other act which would not in itself substantially benefit the defendant but which is calculated to harm substantially some person with respect to his health, safety, business, calling, career, financial condition, reputation, or personal relationships; or

* * *

[§621-10.5] Unlawful suspension or discharge from employment; penalty; right of action. (a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because the employee receives a summons, responds thereto, serves as a witness or attends court as a prospective witness.

(b) Any employer who violates subsection (a) is guilty of a petty misdemeanor.

(c) If an employer discharges or suspends an employee in violation of subsection (a) the employee within ninety days from the date of discharge or suspension may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks. If he prevails, the employee shall be allowed a reasonable attorney's fee fixed by the court. [L 1978, c 13, §1]

* * *

§52-13 Duty of police officer to owner. Where any stolen or lost property is in the custody of any police officer, he shall deliver the property to the owner thereof or his duly authorized agent upon satisfactory proof of ownership, and if to an agent, of the agency, upon payment by the owner or agent of all necessary and reasonable expenses which may have been incurred for the preservation and safekeeping of the property. [L 1949, c 319, §3; RL 1955, §138-36]

§52-14 Orders of retention. No property shall be sold or delivered under sections 52-11 to 52-15 if the chief of police of the city and county or any chief of police of any of the counties, or any county attorney, or any court directs that it be retained for the purpose of being used as evidence in the administration of justice. [L 1949, c 319, §4; RL 1955, §138-37; HRS §52-14; am L 1970, c 188, §39]

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§706-662 Criteria for sentence of extended term of imprisonment for felony. The court may sentence a person who has been convicted of a felony to an extended term of imprisonment if it finds one or more of the grounds specified in this section. The finding of the court shall be incorporated in the record.

Offender against elderly or handicapped. The defendant is an offender against the elderly or handicapped whose commitment for an extended term is necessary for the protection of the public. The court shall not make such a finding unless:

- (a) The defendant inflicts serious bodily injury upon a person who is sixty years of age or older; or against a person who is blind, a paraplegic, or a quadriplegic; and
- (b) Such disability is known or reasonably should be known to the defendant; and

* * *

[CHAPTER 349C] ELDERLY ABUSE OR NEGLECT

- [349C-1] DEFINITIONS
- [349C-2] REPORTS
- [349C-3] ACTION ON REPORTING
- [349C-4] IMMUNITY FROM LIABILITY
- [349C-5] EXEMPTION
- [349C-6] ADMISSIBILITY OF EVIDENCE
- [349C-7] RULES
- [349C-8] CONFIDENTIALITY OF REPORTS

[§349C-1] Definitions. For the purposes of this chapter:

- (1) "Doctor" means any person licensed to practice medicine, osteopathy, dentistry, or any other healing art in the State;
- (2) "Elderly abuse or neglect" means actual or threatened physical injury, psychological abuse or neglect, sexual abuse, negligent treatment, or maltreatment of an elderly person caused by another person; and
- (3) "Elderly person" means any person who is at least sixty-five years of age. [L 1981, c 28, pt of §1]

[§349C-2] Reports. Any doctor, registered nurse, social worker, police officer, other law enforcement officer, medical examiner, or coroner acting in the person's professional capacity who has reason to believe that an elderly person is or has been the subject of elderly abuse or neglect shall promptly report the matter orally to the department of social services and housing. Any member of the staff of a hospital or medical facility examining, attending, or treating an elderly person who has reason to believe that the elderly person is or has been the subject of elderly abuse or neglect shall immediately notify the person in charge of the hospital or medical facility or the person's designated representative. The person in charge of the hospital or medical facility or the designated representative shall immediately notify the department of social services and housing in accordance with this chapter.

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The initial oral report shall be followed as soon as possible by a report in writing to the department of social services and housing; provided that where a police department is the initiating agency, a written report shall not be required unless the police department has declined to take further action and the department of social services and housing informs the police department that it intends to pursue the matter of the orally reported incident of elderly abuse or neglect. All written reports shall contain the name and address of the elderly person and the person who is alleged to have committed or been responsible for the elderly abuse or neglect, if known, the nature and extent of the elderly person's injury or harm, and any other information the reporter believes might be helpful in establishing the cause of the elderly abuse or neglect.

Any other person who has reason to believe that an elderly person is or has been the subject of elderly abuse or neglect may report the matter orally to the department of social services and housing. [L 1981, c 28, pt of §1]

[§349C-3] **Action on reporting.** The department of social services and housing, upon receiving an oral report under section 349C-2, shall, where the department deems it appropriate, take action towards preventing further abuse or neglect. If the elderly person who is or has been the subject of elderly abuse or neglect has suffered injury or harm so serious that criminal prosecution of the person who committed the elderly abuse or neglect is warranted, the department shall report its findings to the appropriate police department or prosecuting attorney.

The department of social services and housing shall maintain a central registry of reported cases. [L 1981, c 28, pt of §1]

[§349C-4] **Immunity from liability.** Any person participating in good faith in the making of a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed by or as a result of the making of such report. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report. [L 1981, c 28, pt of §1]

[§349C-5] **Exemption.** No elderly person who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall be considered, for this reason alone, to be medically neglected under this chapter. [L 1981, c 28, pt of §1]

[§349C-6] **Admissibility of evidence.** Neither the doctor-patient privilege nor the husband-wife privilege shall be ground for excluding evidence regarding an elderly person's harm or injury, or the cause thereof, in any judicial proceeding resulting from a report pursuant to this chapter. [L 1981, c 28, pt of §1]

[§349C-7] **Rules.** The department of social services and housing shall adopt rules under chapter 91 for the purposes of this chapter. [L 1981, c 28, pt of §1]

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[§349C-8] **Confidentiality of reports.** All reports concerning elderly abuse or neglect made pursuant to this chapter, as well as all records of such reports, are confidential and any unauthorized disclosure of a report or record of a report is a misdemeanor. The director of social services may adopt, amend, or repeal rules, subject to chapter 91, to provide for the confidentiality of reports and records and for the authorized disclosure of reports and records. [L 1982, c 241, §1]

* * *

CHAPTER 709 OFFENSES AGAINST THE FAMILY AND AGAINST INCOMPETENTS

SECTION

709-906 SPOUSE ABUSE, PENALTY

[709-907] OFFENSES AGAINST THE PERSON OF A SPOUSE, PETITION, PROCEEDINGS

§709-906 Spouse abuse, penalty. (1) It shall be unlawful for any person, singly or in concert, to physically abuse his or her spouse, or to refuse compliance with the lawful order of a police officer under subsection (3). The police, in investigating any complaint of spouse abuse may, upon request, transport the abused person to a hospital or safe shelter.

(2) Any police officer may, with or without a warrant, arrest a person if he has reasonable grounds to believe that the person is physically abusing, or has physically abused, his or her spouse and that the person arrested is guilty thereof.

(3) Any police officer may, with or without a warrant, take the following course of action where he has reasonable grounds to believe that there was recent, substantial, physical harm inflicted by one spouse upon the other:

- (a) He may make reasonable inquiry of the spouse upon whom he believes recent, substantial, physical harm has been inflicted and other witnesses as there may be, to ascertain whether there is probable danger of further substantial, physical harm being inflicted upon such injured spouse by the other spouse; and
- (b) Where he has reasonable grounds to believe that there is such probable danger he may lawfully order such other spouse to voluntarily leave the premises for a cooling off period of three hours; and
- (c) If such other spouse refuses to comply with such reasonable request or returns to the premises before the expiration of three hours, he may place such other spouse under arrest for the purpose of preventing further physical harm to the injured spouse.

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SUPPLEMENTAL COMMENTARY ON §709-906

Act 106, Session Laws 1980, amended subsection (1) to authorize the police to transport the victim of spouse abuse to a safe place when in the investigating officer's judgment it is reasonably necessary to do so and there is no effective alternative transportation. Senate Standing Committee Report No. 667-80; House Standing Committee Report No. 875-80.

Act 266, Session Laws 1980, amended subsections (2) and (3) to authorize a police officer to make an arrest or take the actions specified in subsection (3) regardless of whether the physical abuse occurred in his presence or not. The changes to this section and the enactment of §709-907 were intended to expand the protection and remedies available to a spouse who is

the victim of non-felonious offense against the person committed by the other spouse. While recognizing the expertise of the family court, the conference committee stated that "your Committee is concerned that family court administrative policies may be diverting an inordinate number of petitions for summonses to counseling, and respectfully recommends that the court review its policy to ensure that the remedy the law creates not be vitiated by undue reluctance to employ it." Conference Committee Report No. 29-80 (33-80).

Act 82, Session Laws 1981, substituted "the abused person" for "such person" in the last sentence of subsection (1) for purposes of clarity.

[§709-907] Offenses against the person of a spouse, petition, proceedings.

(1) Any spouse against whose person an offense, other than a felony, has been committed by the other spouse may petition the family court for a summons to issue forthwith.

(2) The petition shall include, or be accompanied by, an affidavit sworn to by the petitioning spouse which substantiates a finding by the court that an offense has been committed. A petitioning spouse who knowingly makes a false statement which he or she does not believe to be true in a proceeding pursuant to this section shall be guilty of false swearing. Before a summons may issue, there shall be good cause shown and a finding of probable cause that a nonfelonious offense has been committed against the person of the petitioning spouse.

(3) Service of the petition and summons on the respondent spouse shall be as provided by law or court rule for cases in the family court. If the respondent spouse fails to appear at the court hearing, the court may find the respondent spouse in contempt of court and may issue a bench warrant forthwith.

(4) If it is established beyond a reasonable doubt at the hearing that the respondent spouse committed the alleged offense against the petitioning spouse, the court may find the respondent spouse guilty of the offense.

(5) It shall be the duty of the family court to assist any petitioning spouse under this section in the preparation of the petition.

(6) This section shall not preclude any spouse against whose person an offense, other than a felony, has been committed by the other spouse from pursuing any other remedy under law or in equity.

(7) Upon dismissal of a respondent spouse and discharge of the proceeding against such spouse under this section, such spouse, if the offense is the only offense against the petitioning spouse for a period of not less than one year, may apply for an order to expunge from all official records all recordation relating to the arrest, trial, finding of guilt, and dismissal and discharges pursuant to this section. If the court determines, after hearing, that the respondent spouse was dismissed and the proceedings against such spouse were discharged and that no other similar offenses were charged against such spouse for a period not less than one year, it shall enter such order. [L 1980, c 266, §1]

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COMMENTARY ON §709-907

Act 266, Session Laws 1980, added this section to expand the protection and remedies available to a spouse against whose person a non-felonious offense is committed by the other spouse. In enacting this section and amending §709-906, the Legislature recognized the expertise of the family court but expressed its concern

that "family court administrative policies may be diverting an inordinate number of petitions for summonses to counseling, and respectfully recommends that the court review its policy to ensure that the remedy the law creates not be vitiated by undue reluctance to employ it." Conference Committee Report No. 29-80 (33-80).

* * *

[CHAPTER 586] DOMESTIC ABUSE PROTECTIVE ORDERS

- [586-1] DEFINITIONS
- [586-2] COURT JURISDICTION
- [586-3] ORDER FOR PROTECTION
- [586-4] TEMPORARY RESTRAINING ORDER
- [586-5] PERIOD OF ORDER; HEARING
- [586-6] SERVICE OF ORDER
- [586-7] ASSISTANCE OF POLICE IN SERVICE OR EXECUTION
- [586-8] RIGHT TO APPLY FOR RELIEF
- [586-9] MODIFICATION OF ORDER
- [586-10] COPY TO LAW ENFORCEMENT AGENCY
- [586-11] VIOLATION OF AN ORDER FOR PROTECTION

[§586-1] Definitions. As used in this chapter:

"Domestic abuse" means:

- (1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, between family or household members; or
- (2) Any act which would constitute an offense under section 709-906, or under part V or VI of chapter 707 committed against a minor family or household member by an adult family or household member.

"Family or household members" means spouses or former spouses, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit. [L 1982, c 123, pt of §2]

[§586-2] Court jurisdiction. An application for relief under this chapter may be filed in any family court in the circuit in which the petitioner resides. Actions under this chapter shall be given docket priorities by the court. [L 1982, c 123, pt of §2]

[§586-3] Order for protection. (a) There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(b) A petition for relief under this chapter may be made by any family or household member on his or her own behalf or on behalf of minor family or household members.

(c) A petition for relief shall be in writing and upon forms provided by the

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court and shall allege that a recent past act or acts of abuse have occurred, or that the threats of abuse make it probable that acts of abuse may be imminent; and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(d) The family court shall designate an employee or appropriate nonjudicial agency to assist the person in completing the petition. [L 1982, c 123, pt of §2]

[§586-4] Temporary restraining order. Upon petition to a family court judge, a temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed. The order may be granted to any person who, at the time such order is granted, is a family or household member as defined in section 586-1. The family court judge may issue the ex parte temporary restraining order orally, but shall reduce the order to writing by the close of the next court day following the application. The order shall state that there is probable cause to believe that a recent past act or acts of abuse have occurred, or that threats of abuse make it probable that acts of abuse may be imminent. The order shall further state that the temporary restraining order is necessary for the purpose of preventing acts of abuse, or a recurrence of actual domestic abuse, and assuring a period of separation of the parties involved. The order shall describe in reasonable detail the act or acts sought to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order, and may also restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing the children or other relatives of the applicant residing with the applicant at the time of the granting of the order. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them. [L 1982, c 123, pt of §2]

[§586-5] Period of order; hearing. A temporary restraining order granted pursuant to this chapter shall remain in effect at the discretion of the court, not to exceed thirty days. On the earliest date that the business of the court will permit, but no later than fifteen days from the date the temporary restraining order is granted, the court shall, after giving due notice to all parties, hold a hearing on the application requiring cause to be shown why the order should not continue. In the event that service has not been effected, the court may set a new date for the hearing. All parties shall be present at the hearing and may be represented by counsel. If after hearing all relevant evidence, the court finds that a further period of separation of the parties is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for such further period as the court deems appropriate, not to exceed ninety days from the dated of its initial order.

The protective order may include all orders stated in the temporary restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation with regard to minor children of the parties and orders to either or both parties to participate in treatment or counseling services. [L 1982, c 123, pt of §2]

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[§586-6] Service of order. Any order issued under this chapter shall be personally served upon the respondent. [L 1982, c 123, pt of §2]

[§586-7] Assistance of police in service or execution. When an order is issued under this chapter upon request of the petitioner, the court may order the police department to serve the order and related documents upon respondent and to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence. [L 1982, c 123, pt of §2]

[§586-8] Right to apply for relief. (a) A person's right to apply for relief shall not be affected by the person's leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it deems it necessary in exceptional cases. [L 1982, c 123, pt of §2]

Revision Note

The word "it" added before the word "necessary" in subsection (b).

[§586-9] Modification of order. Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection. [L 1982, c 123, pt of §2]

[§586-10] Copy to law enforcement agency. (a) Upon the request of the petitioner, any order for protection granted pursuant to this chapter shall be forwarded by the clerk of the court within twenty-four hours to the county police department.

(b) Each county police department shall make available to other law enforcement officers in the same county, through a system for verification, information as to the existence and status of any order for protection issued pursuant to this chapter. [L 1982, c 123, pt of §2]

[§586-11] Violation of an order for protection. Whenever an order for protection is granted pursuant to this chapter and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor. All remedies for the enforcement of judgments shall apply to this chapter. [L 1982, c 123, pt of §2]

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	18-6106 (to rape victims)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	19-5301
4. Witness Fees	19-3008
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	18-2604
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	39-5301, 39-5303
12.4 Abuse, Neglect, Exploitation - Protective Services	39-5304, 39-5306
13. Sexual Assault Victims	
13.1 Payment for Medical Services	18-6106 (by offender)
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	39-5201 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	39-5205
15.4 Sexual Assault Counselor Privilege	

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18-6104. **Punishment for rape.** — Rape is punishable by imprisonment in the state prison not less than one (1) year, and the imprisonment may be extended to life in the discretion of the District Judge, who shall pass sentence. [I.C., § 18-6104, as added by 1972, ch. 336, § 1, p. 844.]

18-6106. **Restitution to victim.** — Persons convicted of offenses covered under this chapter may be ordered by the court to provide restitution to the victim for specific costs incurred by the victim as a result of injury or loss caused by the criminal act. [I.C., § 18-6106, as added by 1977, ch. 208, § 3, p. 573.]

* * *

CHAPTER 53
COMPENSATION OF VICTIMS OF CRIMES

SECTION.

19-5301. Distribution of moneys received as
a result of the commission of
crime.

19-5301. **Distribution of moneys received as a result of the commission of crime.** — (1) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the state treasurer any moneys which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. The state treasurer shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime or is acquitted on the ground of mental disease or defect excluding responsibility and provided further that such victim, or his personal representative, within five (5) years of the date the escrow account has been established, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.

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(2) The state treasurer, at least once every six (6) months for five (5) years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county of the state where the crime was committed advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section.

(3) Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five (5) years have elapsed from the establishment of such escrow account and further that no actions are pending against such person, pursuant to this section the board shall immediately pay over any moneys in the escrow account to such person.

(4) Notwithstanding the foregoing provisions of this section the state treasurer shall make payments from an escrow account to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

(5) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

(6) The state treasurer may invest the moneys in any escrow account hereunder in any United States government notes or securities.

(7) The attorney general or any other person may bring an action in a court of competent jurisdiction to require the deposit of moneys in an escrow account as provided in this section. [I.C., § 19-5301, as added by 1978, ch. 259, § 1, p. 564.]

* * *

19-3008. **Fees and mileage of witnesses.** — When a person shall attend before a grand jury, or the district court, as a witness, upon a subpoena, or pursuant to an undertaking, such person shall receive the same rate per mile as the state of Idaho pays for state employees pursuant to section 67-2008, Idaho Code, but no person can receive more than one (1) mile under this section at one (1) term of the district court; such person shall also receive eight dollars (\$8.00) per day for each day's actual attendance as such witness. Such mileage and per diem must be paid out of the county treasury of the county where such district court is held, upon the certificate of the clerk of said court: provided, however, that when a defendant in a criminal proceeding requires the attendance of more than five (5) witnesses in his behalf, before such witnesses shall be subpoenaed at the county's expense, or their fees and mileage be a charge against the county,

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such defendant must make affidavit setting forth that they are witnesses whose evidence is material to his defense, and that he can not safely go to trial without them. In such case the court, or the judge thereof, at any time application is made therefor, shall order a subpoena to issue to such of said witnesses as the court, or the judge thereof, may deem material for the defendant, and the costs incurred by the process and the fees and mileage of such witnesses shall be paid in the same manner that the costs and fees of other witnesses are paid. [R.S., § 8151; am. 1893, p. 20, § 1; reen. 1899, p. 172, § 1; am. 1899, p. 367, § 1; reen. R.C., & C.L., § 8151; C.S., § 9135;

* * *

18-2604. Preventing attendance of witness. — Every person who wilfully prevents, dissuades, intimidates, deters, or harasses any person who is or may become a witness, from attending upon any trial, proceeding or inquiry, authorized by law, is guilty of a misdemeanor, unless the trial, proceeding or inquiry is criminal in nature and involves a felony offense, in which case said person is guilty of a felony and subject to a maximum fine of ten thousand dollars (\$10,000) and a maximum sentence of five (5) years in prison. [I.C., § 18-2604, as added by 1972, ch. 336, § 1, p. 844; am. 1980, ch. 153, § 1, p. 323.]

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CHAPTER [53] 52

ELDERLY ABUSE, EXPLOITATION, NEGLECT AND ABANDONMENT REPORTING

SECTION.	SECTION.
[39-5301] 39-5201. Short title.	[39-5304] 39-5204. Supportive services.
[39-5302] 39-5202. Definitions.	[39-5305] 39-5205. Access to records.
[39-5303] 39-5203. Reporting cases of abuse, exploitation or neglect of the elderly.	[39-5306] 39-5206. Emergency services.
	[39-5307] 39-5207. Interagency cooperation.
SECTION.	SECTION.
[39-5308] 39-5208. Coordination of services.	[39-5311] 39-5211. Effect of actions taken pursuant to the natural death act.
[39-5309] 39-5209. Payments.	[39-5312] 39-5212. Rules and regulations.
[39-5310] 39-5210. Prosecution.	

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[39-5301] 39-5201. Short title. — This chapter shall be known and may be cited as the "Elderly Abuse, Exploitation, Neglect and Abandonment Reporting Act." [1982, ch. 286, § 2, p. 734.]

Compiler's notes. Two 1982 acts, chapters 181 and 286, purported to create a new chapter 52 in Title 39. Chapter 181 has been compiled as Title 39, chapter 52 (§§ 39-5201 — 39-5213) while chapter 286 has been designated by the compiler as Title 39, chapter [53]52 (§§ [39-5301] 39-5201 — [39-5312] 39-5212). Accordingly, bracketed section designations have been inserted by the compiler throughout this chapter.

Legislative Intent. Section 1 of S.L. 1982, ch. 286 read: "It is hereby declared by the legislature of the state of Idaho that its elderly citizens be protected from abuse, exploitation, neglect and abandonment

through the reporting and investigation of such acts by the state using available laws and procedures, through the coordinated efforts of state, county and local units of government and the private sector, and with the minimum degree of governmental intervention possible."

Cross ref. Natural Death Act, §§ 39-4501 — 39-4508.

Protection of persons under disability, §§ 15-5-101 — 15-5-502.

Respite care services, §§ 39-4701 — 39-4708.

Shelter home care, §§ 39-3301 — 39-3309.

[39-5302] 39-5202. Definitions. — For the purposes of this chapter:

(1) "Abandonment" means the desertion or willful forsaking of an elderly person by any individual, institution, or entity which has assumed responsibility for the care of any elderly person by contract, receipt of payment of care, any relationship arising from blood or marriage wherein the elderly person has become the dependent of another, or by order of a court of competent jurisdiction; provided, that "abandonment" shall not be construed to mean the termination of services to an elderly person by a physician licensed under chapter 18, title 54, Idaho Code, or anyone under his direct supervision, where the physician determines, in the exercise of his or her professional judgment, that termination of such services is in the best interests of the patient.

(2) "Abuse" means any conduct as a result of which an elderly person suffers skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence.

(3) "Department" means the Idaho department of health and welfare.

(4) "Elderly person" means any resident of the state of Idaho who is sixty (60) years of age or older.

(5) "Exploitation" means the act or process of using the resources of an elderly person for monetary or personal benefit, profit or gain by use of threat, undue influence, harassment, duress, deception, false representation or false pretenses.

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(6) "Goods or services reasonably necessary to sustain the life and health of any elderly person" mean those goods or services an ordinarily prudent person of similar age and circumstance would seek to avoid harm. Such goods or services shall be determined on a case-by-case basis and may include the provision of medical care for physical and mental health needs; medical and nursing care; adequate food and clothing; suitable and safe shelter; noninstitutional assistance in nutrition, hygiene, and homemaking; transportation to obtain necessary goods and services; and such other goods and services as may be made available to eligible elderly persons, from whatever source, designed to assist in achieving the purposes of this chapter.

(7) "Mental injury" means a substantial impairment in the intellectual or psychological ability of an elderly person to function within a normal range of performance and/or behavior. The list of injuries and conditions set forth in this subsection is illustrative only and shall not be construed to exclude any other injury or condition which is not listed and which may constitute abuse under this chapter.

(8) "Neglect" means the negligent failure to provide those goods or services which are reasonably necessary to sustain the life and health of an elderly person.

(9) "Supportive services" mean that array of noninvestigatory, preventive, sustaining, or surrogate services authorized by the laws of the United States or the state of Idaho for which an elderly person is eligible, which may be made available by any authorized federal, state, local or other authorized agency, subject to available resources, to prevent, alleviate, or correct conditions arising from abuse, abandonment, exploitation, or neglect.

Nothing in this act shall be construed to mean a person is abused, neglected, abandoned, exploited, or in need of supportive services for the sole reason he is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall anything in this act be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such a person. [1982, ch. 286, § 2, p. 734.]

Compiler's notes. The bracketed section designation was inserted by the compiler. See Compiler's notes, § [39-5301] 39-5201.

[39-5303] 39-5203. Reporting cases of abuse, exploitation or neglect of the elderly. — (1) Any person having reasonable cause to believe that an elderly person has been abused, abandoned, neglected or exploited, or who observes the elderly person being subjected to conditions or circumstances which would reasonably result in abuse, neglect, exploitation or abandonment shall report or cause to be reported within twenty-four (24) hours such conditions or circumstances to the department.

(2) Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such

report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or provision of services, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the case of provision of services, in the presence of gross negligence under the existing circumstances.

(3) Upon receiving a report that an elderly person allegedly is being, or has been, abused, neglected, exploited or abandoned, the director of the department shall cause a prompt and thorough evaluation of the report to be made. If the director determines that the report is unsubstantiated and that no other law has been violated, he shall order all records relating to the report expunged. If the director determines the report to be valid, he shall order that an appropriate plan of emergency and supportive services be drawn, in a manner consistent with the provisions of this chapter and any other applicable provision of law, to assist the elderly person in the most expedient way possible.

(4) If the department engages in a plan of supportive services for the elderly person, said plan shall provide for services that are least restrictive of personal freedom and encourage client self-determination and continuity of care.

(5) Neither the original report nor any subsequent evaluation shall be deemed a public record. The name of the person making the original report or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests such disclosure or unless the disclosure is made pursuant to a court order or hearing. [1982, ch. 286, § 2, p. 734.]

Compiler's notes. The bracketed section designation was inserted by the compiler. See Compiler's notes, § [39-5301] 39-5201.

[39-5304] 39-5204. Supportive services. — Upon evaluation of a report filed pursuant to this chapter, if the director of the department determines that an elderly person who is a victim of abuse, abandonment, exploitation, or neglect is an incapacitated person, as defined in section 15-5-101(a), Idaho Code, the director is authorized to petition the court for protective proceedings, appointment of a guardian or conservator and such other relief as may be provided by chapter 5, title 15, Idaho Code, which he deems necessary to protect the person, property, and affairs of such elderly person; provided, that in no case shall the court appoint the director or employees or agents of the department to be the guardian or conservator of such elderly person. [1982, ch. 286, § 2, p. 734.]

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[39-5305] 39-5205. **Access to records.** — Any person, department, agency or commission authorized to carry out the duties enumerated in this chapter shall have access to all relevant records, except that records which are confidential to an elderly person shall only be divulged with the written consent of that person or his legal representative. No medical records of any elderly person may be divulged for any purpose without the express written consent of such person or his or her court-appointed guardian or conservator, or pursuant to other proper judicial process. [1982, ch. 286, § 2, p. 734.]

Compiler's notes. The bracketed section designation was inserted by the compiler. See Compiler's notes, § [39-5301] 39-5201.

[39-5306] 39-5206. **Emergency services.** — Where no guardian exists or where no other person appears to have authority to act under the circumstances the department shall provide emergency services to an elderly person who is incapacitated as defined in section 15-5-101, Idaho Code. Said services may include, but shall not be limited to, the initiation of such procedures as set forth in section 15-5-310, Idaho Code. [1982, ch. 286, § 2, p. 734.]

Compiler's notes. The bracketed section designation was inserted by the compiler. See Compiler's notes, § [39-5301] 39-5201.

[39-5307] 39-5207. **Interagency cooperation.** — In performing the duties set forth in this chapter, the department may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. [1982, ch. 286, § 2, p. 734.]

Compiler's notes. The bracketed section designation was inserted by the compiler. See Compiler's notes, § [39-5301] 39-5201.

[39-5308] 39-5208. **Coordination of services.** — Subsequent to the authorization for the provision of reasonable and necessary emergency and support services, the department shall initiate a review of each case at reasonable intervals over a reasonable period of time as the department deems necessary based upon the circumstances in each individual case to determine whether continuation or modification of the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from other involved state and local groups, agencies and departments, and shall comply with the consent provisions of this chapter. [1982, ch. 286, § 2, p. 734.]

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[39-5309] 39-5209. **Payments.** — Prior to implementation of any supportive services, an evaluation shall be undertaken by the department regarding the elderly person's financial capability for paying for the services. If the person is so able, procedures for the reimbursement for the costs of providing the needed services may be initiated.

For direct services to elderly persons living in noninstitutional circumstances, fees for such services shall be based upon a variable schedule according to regulations established by the department and based upon the elderly persons' ability to pay for such services. [1982, ch. 286, § 2, p. 734.]

Compiler's notes. The bracketed section designation was inserted by the compiler. See Compiler's notes, § [39-5301] 39-5201.

[39-5310] 39-5210. **Prosecution.** — If as a result of any investigation initiated under the provisions of this chapter, the director has reasonable cause to believe that any person has abused, neglected, exploited or abandoned an elderly person, and it appears that a crime may have been committed in connection with either the circumstances leading to the report or the report itself, such information shall be referred in writing to the appropriate office of the prosecuting attorney which shall conduct such further investigation, if any is deemed necessary and shall determine whether criminal proceedings should be initiated against such caretaker or other person, in accordance with applicable state law. [1982, ch. 286, § 2, p. 734.]

Compiler's notes. The bracketed section designation was inserted by the compiler. See Compiler's notes, § [39-5301] 39-5201.

[39-5311] 39-5211. **Effect of actions taken pursuant to the natural death act.** — Any action taken by a physician or health facility pursuant to an agreement with an elderly person executed in accordance with the provisions of chapter 45, title 39, Idaho Code, shall not be construed to constitute abuse, abandonment, exploitation, or neglect, so long as it is consistent with the withholding or withdrawal of artificial life-sustaining procedures from a qualified patient. [1982, ch. 286, § 2, p. 734.]

Compiler's notes. The bracketed section designation was inserted by the compiler. See Compiler's notes, § [39-5301] 39-5201.

[39-5312] 39-5212. **Rules and regulations.** — The director of the department shall have the authority to adopt, promulgate and enforce such rules and regulations as he deems necessary in carrying out the provisions of this chapter, subject to the provisions of chapter 52, title 67, Idaho Code. [1982, ch. 286, § 2, p. 734.]

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CHAPTER 52

DOMESTIC VIOLENCE PROJECT GRANTS

SECTION.		SECTION.	
39-5201.	Declaration of policy.	39-5208.	Responsibilities and duties.
39-5202.	Definitions.	39-5209.	Rules.
39-5203.	Council on domestic violence.	39-5210.	Eligible projects.
39-5204.	Composition.	39-5211.	Qualifications of applicants.
39-5205.	Appointment and term of office.	39-5212.	Domestic violence project account.
39-5206.	Compensation and expenses.	39-5213.	Fee imposed.
39-5207.	Organization of council — Employment of necessary personnel.		

39-5201. Declaration of policy. — The legislature finds that domestic violence is an issue of growing concern. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. Domestic violence is a disruptive influence on personal and community life and is often interrelated with a number of other family problems and stresses. Refuge for victims of domestic violence is essential to provide protection to victims from further abuse and physical harm. Refuge provides temporary safety and resources to victims who may not have access to such things if they remain in abusive situations.

It is the purpose of the legislature in the adoption of this chapter to provide funding for projects in the several areas of the state for the purpose of aiding victims of domestic violence by providing them a place to escape the destructive environment.

It is understood that the intention of the provisions of this chapter is not to supersede the authority or responsibilities of agencies of state government responsible for providing services to persons pursuant to the child protective act or adult protective provisions in the Idaho Code. [I.C., § 39-5201, as added by 1982, ch. 181, § 1, p. 469.]

39-5202. Definitions. — As used in this chapter:

(1) "Domestic violence" means the physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member.

(2) "Family or household member" means one who is related by blood, marriage, or who resides or has resided with or has been married to the person committing the domestic violence.

(3) "Safe house" means a place available on an as needed basis for temporary residence to victims of domestic violence and their children.

(4) "Refuge" means a place available on a twenty-four (24) hour, seven (7) days a week basis, to provide temporary residence to victims of domestic violence and their children.

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(5) "Crisis line" means an emergency twenty-four (24) hour telephone service staffed by persons able to provide information and referral to community services.

(6) "Council" means the Idaho council on domestic violence created in section 39-5203, Idaho Code. [I.C., § 39-5202, as added by 1982, ch. 181, § 1, p. 469.]

39-5203. Council on domestic violence. — (1) The Idaho council on domestic violence is hereby established. The council shall be the advisory body for programs and services affecting victims of domestic violence.

(2) For budgetary purposes and for administrative support purposes, the council shall be assigned, by the governor, to a department or office within the state government. [I.C., § 39-5203, as added by 1982, ch. 181, § 1, p. 469.]

39-5204. Composition. — The council shall consist of seven (7) members appointed by the governor. At least one (1) member shall reside in each of the seven (7) substate regions established pursuant to section 39-104, Idaho Code. Members shall be representative of persons who have been victims of domestic violence, care providers, law enforcement officials, medical and mental health personnel, counselors, and interested and concerned members of the general public. [I.C., § 39-5204, as added by 1982, ch. 181, § 1, p. 469.]

39-5205. Appointment and term of office. — Each member of the council shall be appointed for a term of three (3) years, except that of the members first appointed; two (2) shall be appointed for a term of one (1) year, two (2) shall be appointed for a term of two (2) years, and three (3) shall be appointed for a term of three (3) years. If a vacancy occurs, a new member shall be appointed in accordance with the provisions of the original appointment for the unexpired portion of the vacated term. Members may be replaced because of poor attendance, lack of participation in the council's work, or malfeasance in office. [I.C., § 39-5205, as added by 1982, ch. 181, § 1, p. 469.]

39-5206. Compensation and expenses. — Members of the council shall be entitled to receive actual and necessary expenses plus compensation as provided in section 59-509(g), Idaho Code. [I.C., § 39-5206, as added by 1982, ch. 181, § 1, p. 469.]

39-5207. Organization of council — Employment of necessary personnel. — (1) The council shall annually designate one (1) of its members to serve as chairman and one (1) member to serve as vice chairman, who shall act as chairman in the chairman's absence. The chairman shall call meetings as provided in the rules of the council.

(2) The council shall adopt and amend rules governing its proceedings, activities and organization including, but not limited to, provisions governing a quorum, procedure, frequency and location of meetings, and establishment, functions and membership of council committees.

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(2) Be a private, nonprofit corporation of the state of Idaho, or a public entity of the state of Idaho;

(3) Provide matching moneys equal to twenty-five percent (25%) of the amount of the grant. The applicant may contribute to or provide the required local matching funds. The value of in-kind contributions and volunteer labor from the community may be computed and included as part of the local matching requirement;

(4) Require persons employed by or volunteering services to the project to maintain the confidentiality of any information that would identify individuals served by the project;

(5) Require victims to reimburse the project monetarily or through volunteer efforts for services provided as they are able to do so. Minimum reimbursement may be established by the council, with a sliding scale of reimbursement based on the victim's ability to pay;

(6) Provide a policy of nondiscrimination in its admissions and provision of services on the basis of race, religion, gender, color, age, marital status, national origin or ancestry. [I.C., § 39-5211, as added by 1982, ch. 181, § 1, p. 469.]

39-5212. Domestic violence project account. — There is hereby created in the state operating fund the domestic violence project account. Moneys received from the fee imposed by section 39-5213, Idaho Code, shall be credited to the account and shall be perpetually appropriated to the council on domestic violence for grants for domestic violence projects and to meet the costs of maintaining the operation of the council.

Eligible projects shall be given priority by the council based upon an allocation of funds to projects in the seven (7) substate regions established pursuant to section 39-104, Idaho Code, in the proportion that marriage licenses are filed in each region. [I.C., § 39-5212, as added by 1982, ch. 181, § 1, p. 469.]

39-5213. Fee imposed. — In addition to the fee due to the county recorder of each county of this state under the provisions of section 31-3205, Idaho Code, for the issuance of a marriage license, the recorder shall collect an additional fee of fifteen dollars (\$15.00) for each license issued, which additional fee shall be remitted to the state treasurer for credit to the "domestic violence project account" created in section 39-5212, Idaho Code. [I.C., § 39-5213, as added by 1982, ch. 181, § 1, p. 469.]

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(3) The council may employ and shall fix the compensation, subject to provisions of chapter 53, title 67, Idaho Code, of such personnel as may be necessary including, but not limited to, a part-time administrator, who shall be designated as the executive director of the council and who shall be exempt from the provisions of chapter 53, title 67, Idaho Code. [I.C., § 39-5207, as added by 1982, ch. 181, § 1, p. 469.]

39-5208. Responsibilities and duties. — The council shall:

(1) Establish standards for projects applying for grants from the council under this chapter;

(2) Disseminate information on availability of funds and the application process;

(3) Receive grant applications for the development and establishment of projects for victims of domestic violence;

(4) Distribute funds after approval of projects meeting council standards;

(5) Assess, review and monitor the services and programs being provided for victims of domestic violence under this chapter;

(6) Monitor programs and services for victims of domestic violence to assure nonduplication of services and to encourage efficient and coordinated use of resources in the provision of services;

(7) Compile data on the services and programs provided to victims of domestic violence and the geographic incidence of domestic violence in this state; and

(8) Submit annual reports to the governor and the legislature. [I.C., § 39-5208, as added by 1982, ch. 181, § 1, p. 469.]

39-5209. Rules. — The council shall promulgate, adopt and amend rules, regulations and criteria to implement the provisions of this chapter regarding applications and grants for domestic violence project funding. Such promulgation, adoption and amendment shall be in compliance with the provisions of chapter 52, title 67, Idaho Code. [I.C., § 39-5209, as added by 1982, ch. 181, § 1, p. 469.]

39-5210. Eligible projects. — To be eligible for grants pursuant to this chapter, a project must provide a safe house or refuge and a crisis line. Other services which may be provided include, but are not limited to:

(1) Counseling;

(2) Educational services for community awareness, for prevention of domestic violence and for the care, treatment and rehabilitation of parties to domestic violence;

(3) Support groups;

(4) Assistance in obtaining legal, medical, psychological or vocational services. [I.C., § 39-5210, as added by 1982, ch. 181, § 1, p. 469.]

39-5211. Qualifications of applicants. — To qualify for grants under the provisions of this chapter, an applicant must:

(1) Propose to operate and provide an eligible project;

Category	Citation
1. Victim Compensation Program	70-71 et seq.
1.1 Responsible Agency	70-73.1
1.2 Eligible Claimants	70-76.1
1.3 Losses Covered	70-80.1
1.4 Minimum and Maximum Award	70-76.1(b), 70-80.1(e),(f)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	70-76.1(c)
1.7 Filing of Claim - Time Limit	70-76.1(a)
1.8 Emergency Award	
1.9 Funding	70-87
2. Restitution	
2.1 Sentencing Option	38-1005-5-3(c)(2),(3); 38-1005-5-6; 38-1005-6-3(b)(9); 38-1005-6-3.1(c)(9)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	38-1005-5-6(d)
3. Escrow and Forfeiture of Offender Profits	70-401 et seq.
4. Witness Fees	53-65
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	38-32-4, 38-32-4a
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	70-75.1
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	38-1005-3-2(3)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	38-155-3
10. Return of Seized Property	38-115-9
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	70-501 et seq.
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	38-1005-5-3.2(b)(3)(ii)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	111 1/2-87-7; 111 1/2-1408.4
13.2 Special Programs	111 1/2-87-1 et seq.
13.3 Child Sexual Assault Victim - Closed Proceedings	38-115-11
13.4 Child Sexual Assault Victim - Admissible Depositions	38-115-10
14. Domestic Violence	40-2301-1 et seq.
14.1 Protective Orders	40-2302-1 et seq.; 38-1005-6-3(12); 38-1005-6-3.1(12)
14.2 Domestic Violence Shelters	40-2401 et seq.
14.3 Domestic Violence Reporting	38-206-5.1; 40-2302-10(b); 40-2303-2 et seq.
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	110-8-802.1

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Illinois Annotated Statutes

Chapter 70

CRIME VICTIMS COMPENSATION ACT.

Law Review Commentaries crime. LeRoy L. Lamborn, 1973, Law Forum
Government compensation of victims of 21.

71. Short title

§ 1. This Act shall be known and may be cited as the "Crime Victims Compensation Act".

P.A. 78-359, § 1, eff. Oct. 1, 1973.

Title of Act:

An Act in relation to the compensation of victims of crimes of violence or of the dependents of such victims and to expand the jurisdiction of the Court of Claims to handle such

matters. P.A. 78-359, approved Aug. 23, 1973, eff. Oct. 1, 1973.

Law Review Commentaries

Civil action for rape. 1978, So. Ill. L.J. 399.

72. Definitions

§ 2. As used in this Act, unless the context otherwise requires:

(a) "Applicant" means any person who applies for compensation under this Act or any person the Court of Claims finds is entitled to compensation, including the guardian or conservator of a minor or incompetent. It includes any person who was a dependent of a deceased victim of a crime of violence for his support at the time of the death of that victim.

(b) "Court of Claims" means the Court of Claims created by "An Act to create the Court of Claims, to prescribe its powers and duties, and to repeal an Act herein named", filed July 17, 1945.¹

(c) "Crime of Violence" means and includes any offense defined in Sections 9-1, 9-2, 10-1, 10-2, 11-1, 11-3, 11-4, 12-1, 12-2, 12-3, 12-4, 12-4.1, 12-5, 20-1 or 20-1.1 of the "Criminal Code of 1961"² and reckless homicide, as defined in Section 9-3 of that Code,³ and driving under the influence of intoxicating liquor or narcotic drugs as defined in Section 11-501 of "The Illinois Vehicle Code",⁴ if a conviction for driving under the influence has been entered, and if none of the said offenses occurred during a civil riot, insurrection or rebellion. "Crime of violence" does not include any other offense or accident involving a motor vehicle except those vehicle offenses specifically provided for in this paragraph.

(d) "Victim" means a person (1) killed or injured in this State as a result of a crime of violence perpetrated or attempted against him, (2) killed or injured in this State while attempting to assist a person against whom a crime of violence is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable man under the circumstances, or (3) killed or injured in this State while assisting a law enforcement official to apprehend a person who has perpetrated a crime of violence or to prevent the perpetration of any such crime if that assistance was in response to the express request of the law enforcement official.

(e) "Dependent" means a relative of a deceased victim who was wholly or partially dependent upon the victim's income at the time of his death and shall include the child of such victim born after his death.

(f) "Relative" means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, brother-in-law, sister, sister-in-law, half brother, half sister, spouse's parent, nephew, niece, uncle or aunt.

(g) "Child" means an unmarried son or daughter who is under 18 years of age and includes a stepchild, an adopted child or an illegitimate child.

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(h) "Pecuniary loss" means, in the case of injury, appropriate medical expenses and hospital expenses, medically required nursing care expenses, appropriate psychiatric care expenses, expenses for care by a registered clinical psychologist or certified social worker and expenses for treatment by Christian Science practitioners and nursing care appropriate thereto; prosthetic appliances, eyeglasses, and hearing aids necessary or damaged as a result of the crime;

replacement services loss, to a maximum of \$750 per month; dependents replacement services loss, to a maximum of \$750 per month;

loss of earnings, loss of future earnings because of disability resulting from the injury, and, in addition, in the case of death, funeral and burial expenses to a maximum of \$2,000 and loss of support of the dependents of the victim. Loss of future earnings shall be reduced by any income from substitute work actually performed by the victim or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake. Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on \$750 per month, whichever is less. If a divorced or legally separated applicant is claiming loss of support for a minor child of the deceased, the amount of support for each child shall be based either on the amount of support the minor child received pursuant to the decree for the six months prior to the date of the deceased victim's injury or death, or, if the subject of pending litigation filed by or on behalf of the divorced or legally separated applicant prior to the injury or death, on the result of that litigation. Pecuniary loss does not include pain and suffering or property loss or damage.

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

(j) "Dependents replacement services loss" means loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for their benefit, if he had not been fatally injured.

73. § 3. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

The repealed paragraph was enacted by P.A. 78-359, § 3, eff. Oct. 1, 1973, and provided for compensation for crime victims. Prior to repeal § 73 was amended by P.A. 78-1197, § 1, eff. Sept. 5, 1974.

73.1. Powers and duties of Court of Claims

§ 3.1. In addition to other powers and duties set forth in the Court of Claims Act¹ and this Act, the Court of Claims shall have power to issue subpoenas, to administer oaths, to conduct hearings required by this Act and to promulgate all rules necessary thereto, and prepare an annual report.

P.A. 78-359, § 3.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

¹ Chapter 37, § 439.1 et seq.

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74. § 4. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

The repealed paragraph was enacted by P.A. 78-359, § 4, eff. Oct. 1, 1973, and provided for compensation for crime victims.

74.1. Powers and duties of Attorney General

§ 4.1. In addition to other powers and duties set forth in this Act and other powers exercised by the Attorney General, the Attorney General shall promulgate rules necessary for him to carry out his duties under this Act, investigate all claims and prepare and present a report of each applicant's claim to the Court of Claims prior to the issuance of an order by the Court of Claims, prescribe and furnish all applications, notices of intent to file a claim and other forms required to be filed in the office of the Attorney General by the terms of this Act, and represent the interests of the State of Illinois in any hearing before the Court of Claims. P.A. 78-359, § 4.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

75. § 5. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979, and P.A. 81-1509, Art. I, § 46, eff. Sept. 26, 1980.

The repealed paragraph was enacted by P.A. 78-359, § 5, eff. Oct. 1, 1973, and provided for compensation for crime victims. Prior to repeal, the paragraph was amended by P.A. 81-906, § 11, eff. Sept. 22, 1979, and P.A. 81-992, § 24, eff. Jan. 1, 1980.

75.1. Notice of Act—Hospitals—Law enforcement agencies

§ 5.1. (a) Every hospital licensed under the laws of this State shall display prominently in its emergency room posters giving notification of the existence and general provisions of this Act. Such posters shall be provided by the Attorney General.

(b) Any law enforcement agency that investigates an offense committed in this State shall inform the victim of the offense or his dependents concerning the availability of an award of compensation and advise such persons that any information concerning this Act and the filing of a claim may be obtained from the office of the Attorney General.

P.A. 78-359, § 5.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

76. § 6. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

The repealed paragraph was enacted by P.A. 78-359, § 6, eff. Oct. 1, 1973, and provided for hearings on compensation for crime victims.

76.1. Right to compensation—Conditions—Time for filing

§ 6.1. A person is entitled to compensation under this Act if:

(a) within 6 months of the occurrence of the crime he files a notice of intent to file a claim with the Attorney General and, within one year of the occurrence of the crime upon which the claim is based, he files an application, under oath, with the Court of Claims and on a form prescribed in accordance with Section 7.1¹ furnished by the Attorney General. Upon good cause shown, the Court of Claims may extend the time for filing the notice of intent to file a claim and application for a period not exceeding one year;

(b) his pecuniary loss resulting from the injury or death to the victim is \$200 or more, except that in the case of an applicant 65 years of age or older who meets the income eligibility requirement contained in subsection (f) of Section 4 of the "Senior Citizens and Disabled Persons Property Tax Relief Act", approved July 17, 1972, as amended, this provision is waived;

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(c) the appropriate law enforcement officials were notified within 72 hours of the perpetration of the crime allegedly causing the death or injury to the victim or, in the event such notification was made more than 72 hours after the perpetration of the crime, the applicant establishes that such notice was timely under the circumstances;

(d) the applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant;

(e) the victim and his or her assailant are residing in separate households both at the time the notice of intent is filed with the Attorney General's Office and at the time of the final adjudication of the claim by the Court. If the victim is deceased and the victim and assailant were sharing the same household at the time the crime occurred no award shall be made;

(f) the applicant is not the offender or an accomplice of the offender and the award would not unjustly benefit the offender or his accomplice.

(g) the injury to or death of the victim was not substantially attributable to his own wrongful act and was not substantially provoked by the victim.

77. § 7. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979, and P.A. 81-1509, Art. I, § 46, eff. Sept. 26, 1980.

The repealed paragraph was added by P.A. 78-359, § 7, eff. Oct. 1, 1973, as amended by P.A. 78-1197, § 1, eff. Sept. 5, 1974, and related to factors considered in determining amount of award. This paragraph was also amended by P.A. 81-906, § 11, eff. Sept. 22, 1979, and P.A. 81-992, § 24, eff. Jan. 1, 1980.

77.1. Contents of application for compensation

§ 7.1. (a) The application shall set out:

(1) the name and address of the victim;

(2) if the victim is deceased, the name and address of the applicant and his relationship to the victim, the names and addresses of other persons dependent on the victim for their support and the extent to which each is so dependent, and other persons who may be entitled to compensation for a pecuniary loss;

(3) the date and nature of the crime on which the application for compensation is based;

(4) the date and place where and the law enforcement officials to whom notification of the crime was given;

(5) the nature and extent of the injuries sustained by the victim, and the names and addresses of those giving medical and hospitalization treatment to the victim;

(6) the pecuniary loss to the applicant and to such other persons as are specified under item (2) resulting from the injury or death;

(7) the amount of benefits, payments, or awards, if any, payable under:

(a) the Workers' Compensation Act,¹

(b) the Dram Shop Act,²

(c) any claim, demand, or cause of action based upon the crime-related injury or death,

(d) the Federal Medicare program,

(e) the State Public Aid program,

(f) Social Security Administration burial benefits,

(g) Veterans administration burial benefits,

(h) life, health, accident or liability insurance,

(i) the Criminal Victims' Escrow Account Act,³ or

(j) from any other source.

(8) releases authorizing the surrender to the Court of Claims or Attorney General of reports, documents and other information relating to the matters specified under this Act and rules promulgated in accordance with the Act.

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(9) such other information as the Court of Claims or the Attorney General reasonably requires.

(b) The Attorney General may require that materials substantiating the facts stated in the application be submitted with that application.

(c) An applicant, on his own motion, may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the original application has been disposed of by the Court of Claims. In either case, the filing of additional information or of an amended application shall be considered for the purpose of this Act to have been filed at the same time as the original application.

P.A. 78-359, § 7.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979. Amended by P.A. 81-1509, Art. I, § 47, eff. Sept. 26, 1980; P.A. 82-956, § 1, eff. Jan. 1, 1983.

¹ Chapter 48, § 138.1 et seq.

² Chapter 43, § 94 et seq.

³ Paragraph 401 et seq. of this chapter.

Art. I, § 1 of P.A. 81-1509 provided in part:

"This Article provides for the nonsubstantive revision or renumbering or repeal of Sections of Acts necessitated by the amendment, addition or repeal of Sections by two or more Public Acts of the 81st General Assembly, through Public Act 81-1224, which multiple action was

not resolved by one of the Acts affecting the particular Section."

For provisions of P.A. 81-1509, Art. V relating to effective dates and supersedure, see note following ch. 8, § 37-26.

P.A. 82-956, in subd. (a)(7)(h), inserted "accident or liability".

78. § 8. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

The repealed paragraph was enacted by P.A. 78-359, § 8, eff. Oct. 1, 1973, and provided for compensation for crime victims.

78.1. Substantiation of claim—Time—Failure to comply

§ 8.1. If an applicant does not submit all materials substantiating his claim as requested of him by the Attorney General, the Attorney General shall notify the applicant in writing of the specific additional items of information or materials required and that he has 30 days in which to furnish those items to the Attorney General. The Attorney General shall report an applicant's failure to comply within 30 days of the foregoing notice to the Court of Claims. No award of compensation shall be made for any portion of the applicant's claim that is not substantiated by the applicant. An applicant may request an extension of time from the Attorney General prior to the expiration of the 30 day period.

P.A. 78-359, § 8.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

79. § 9. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

The repealed paragraph was enacted by P.A. 78-359, § 9, eff. Oct. 1, 1973, and provided for modification of awards to crime victims.

79.1. Matters to be considered by Court of Claims

§ 9.1. In determining whether an applicant is entitled to compensation, the Court of Claims shall consider the facts stated in the application and other material and information submitted and the report of the Attorney General. However, the Court of Claims need not consider whether or not the alleged assailant has been apprehended.

P.A. 78-359, § 9.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

80. § 10. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

The repealed paragraph was enacted by P.A. 78-359, § 10, eff. Oct. 1, 1973, and provided for subrogation and claims against awards to crime victims.

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80.1. Amount of compensation—Factors

§ 10.1. The amount of compensation to which an applicant and other persons is entitled shall be based on the following factors:

(a) a victim may be compensated for his pecuniary loss;

(b) a dependent may be compensated for loss of support;

(c) any person related to the victim, even though not dependent upon the victim for his support, may be compensated for reasonable funeral, medical and hospital expenses of the victim to the extent to which he has paid such expenses;

(d) an award shall be reduced or denied according to the extent to which the victim's acts or conduct provoked or contributed to his injury or death, or the extent to which any prior criminal conviction or conduct of the victim may have directly or indirectly contributed to the injury or death of the victim;

(e) an award shall be reduced by \$200, except in the case of an applicant 65 years of age or older, and the amount of benefits, payments or awards payable under those sources are required to be listed under item (7) of Section 7.1(a)¹ and any other sources except annuities, pension plans and Federal Social Security payments payable to dependents of the victim and the net proceeds of the first \$25,000 of life insurance that would inure to the benefit of the applicant, which the applicant or any other person dependent for the support of a deceased victim, as the case may be, has received or to which he is entitled as a result of injury to or death of the victim.

(f) A final award shall not exceed \$10,000 for a crime committed prior to the effective date of this amendatory Act of 1979 or \$15,000 for a crime arising out of a crime committed thereafter. If the total pecuniary loss is greater than the maximum amount allowed, the award shall be divided in proportion to the amount of actual loss among those entitled to compensation;

(g) compensation under this Act is a secondary source of compensation and the applicant must show that he has exhausted the benefits reasonably available under the Criminal Victims' Escrow Account Act² or any governmental or medical or health insurance programs, including, but not limited to Workers' Compensation, the Federal Medicare program, the State Public Aid program, Social Security Administration burial benefits, Veterans Administration burial benefits, and life, health, accident or liability insurance.

81. § 11. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

The repealed paragraph was enacted by P.A. 78-359, § 11, eff. Oct. 1, 1973, and related to release of rights by crime victims.

81.1. Lump sum or installment payments

§ 11.1. The Court of Claims may provide for the payment of an award in a lump sum or in installments.

P.A. 78-359, § 11.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

82. Fees—Counsel's or agents' fees.

§ 12. No fee may be charged to the applicant in any proceeding under this Act except as provided in this Act. If the applicant is represented by counsel or some other duly authorized agent in making application under this Act or in any further proceedings provided for in this Act, that counsel or agent may receive no payment for his services in preparing or presenting the application before the Court of Claims. He may, however, charge fees to the applicant for representing him at a hearing provided for in this Act but only in such an amount as the Court of Claims determines to be reasonable.

P.A. 78-359, § 12, eff. Oct. 1, 1973.

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82.1. Awards without hearing

§ 12.1. The Court of Claims may, without a hearing, make an award to a person who has filed an application or any other person it finds is entitled to compensation, including the guardian or conservator of a minor or incompetent, based upon the application, the other information and materials submitted with the application, and the report of the Attorney General.

P.A. 78-359, § 12.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

83. § 13. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

83.1. Hearings

§ 13.1. (a) A hearing before a Commissioner of the Court of Claims shall be held for those claims in which:

- (1) the Court of Claims on its own motion sets a hearing;
- (2) the Attorney General petitions the Court of Claims for a hearing;
- (3) a claim has been disposed of without a hearing and an applicant has been denied compensation or has been awarded compensation which he thinks is inadequate and he petitions the Court of Claims for a hearing within 30 days of the date of issuance of the order sought to be reviewed. The petition shall set forth the reasons for which review is sought and a recitation of any additional evidence the applicant desires to present to the Court. A copy of the petition shall be provided to the Attorney General.

(b) At hearings held under this Act before Commissioners of the Court of Claims, any statement, document, information or matter may be received in evidence if in the opinion of the Court or its Commissioner such evidence would contribute to a determination of the claim, regardless of whether such evidence would be admissible in a court of law.

Section 2. This Act takes effect upon becoming a law.

84. § 14. Repealed by P.A. 81-1013, § 2, eff. Sept. 22, 1979.

84.1. Public or closed hearings—Transcripts

§ 14.1. (a) Hearings shall be open to the public unless the Court of Claims determines that a closed hearing should be held because:

- (1) the alleged assailant has not been brought to trial and a public hearing would adversely affect either his apprehension or his trial;
- (2) the offense allegedly perpetrated against the victim is one defined in Section 11-1, 11-3 or 11-4 of the "Criminal Code of 1961"¹ and the interests of the victim or of persons dependent on his support require that the public be excluded from the hearing;
- (3) the victim or the alleged assailant is a minor; or
- (4) the interests of justice would be frustrated, rather than furthered, if the hearing were open to the public.

(b) A transcript shall be kept of the hearings held before the Court of Claims. No part of the transcript of any hearing before the Court of Claims may be used for any purpose in a criminal proceeding except in the prosecution of a person alleged to have perjured himself in his testimony before the Court of Claims. A copy of the transcript may be furnished to the applicant upon his written request to the court reporter, accompanied by payment of a charge established by the Court of Claims in accordance with the prevailing commercial charge for a duplicate transcript. Where the interests of justice require, the Court of Claims may refuse to disclose the names of victims or other material in the transcript by which the identity of the victim could be discovered.

P.A. 78-359, § 14.1, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

¹ Chapter 38, §§ 11-1, 11-3 or 11-4.

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85. Orders upon disposition without hearing

§ 15. When disposition is made without a hearing or at the conclusion of a hearing held under this Act, the Court of Claims shall enter an order stating (1) its findings of fact, (2) its decision as to whether or not compensation is due under this Act, (3) the amount of compensation, if any, which is due under this Act, (4) whether disbursement of the compensation awarded is to be made in a lump sum or in periodic payments, and (5) the person or persons to whom the compensation should be paid. P.A. 78-359, § 15, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

86. Modification of dispositions—Newly discovered facts

§ 16. The Court of Claims, on its own motion or upon the written request of any applicant, may modify an award of compensation made under this Act or reconsider a denial of compensation. No hearing need be held, however, unless the written request states facts which were not known to the applicant or by the exercise of reasonable diligence could not have been ascertained by him at the time of the entry of the order sought to be modified and which would have directly affected the determination of whether or not compensation should be awarded and, if so, the amount of that compensation.

P.A. 78-359, § 16, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

87. Subrogation—Notice of civil actions—Charge in favor of State—Refunds

§ 17. (a) The Court of Claims may award compensation on the condition that the applicant subrogate to the State his rights to collect damages from the assailant or any third party who may be liable in damages to the applicant. In such a case the Attorney General may, on behalf of the State, bring suit against an assailant or third party for money damages, but must first notify the applicant and give him an opportunity to participate in the prosecution of the suit. The excess of the amount recovered in any such suit over the amount of the compensation offered and accepted or awarded under this Act plus costs of suit and attorneys' fees actually incurred shall be paid to the applicant.

(b) Nothing in this Act affects the right of the applicant to seek civil damages from the assailant and any other party, but that applicant must give written notice to the Attorney General of the making of a claim or demand or the filing of a suit for such damages. Failure to notify the Attorney General of such claims and suits at the time they are instituted or at the time an application is filed is a willful omission of fact and the applicant thereby becomes subject to the provisions of Section 20 of this Act.¹

(c) The State has a charge for the amount of compensation paid under this Act upon all claims, demands or causes of action against an assailant and any other party to recover for the injuries or death of a victim which were the basis for that payment of compensation. At the time compensation is ordered to be paid under this Act, the Court of Claims shall give written notice of this charge to the applicant. The charge attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the claim, demand, cause of action or suit against the assailant or any other party after the notice is given. On petition filed by the Attorney General on behalf of the State or by the applicant, the circuit court, on written notice to all interested parties, shall adjudicate the right of the parties and enforce the charge. This subsection does not affect the priority of a lien under "AN ACT creating attorney's lien and for enforcement of same", filed June 16, 1909, as amended.²

(d) Where compensation is awarded under this Act and the person receiving same also receives any sum required to be, and that has not been deducted under Section 10.1,³ he shall refund to the State the amount of compensation paid to him which would have been deducted at the time the award was made.

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88. Claims against awards of compensation—Assignments—Joint awards

§ 18. (a) An award is not subject to execution, attachment, garnishment, or other process, except that an award is not exempt from a claim of a creditor to the extent that he provided products, services, or accommodations the costs of which are included in the award.

(b) An assignment or agreement to assign a right to compensation for loss accruing in the future is unenforceable, except:

(1) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or (2) an assignment of a right to compensation to the extent of 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.

(c) The court may order that all or a portion of an award be paid jointly to the applicant and another person to the extent that such other person has provided products, services or accommodations, the costs of which are included in the award. P.A. 78-359, § 18, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

89. Blank.

90. Willful misstatements or omissions—Penalty

§ 20. (a) In addition to any other civil liability or criminal penalties provided by law, a person who the Court of Claims finds has willfully misstated or omitted facts relevant to the determination of whether compensation is due under this Act or of the amount of that compensation, whether in making application for compensation or in the further proceedings provided for in this Act, shall be denied compensation under this Act.

(b) A person who is convicted of having willfully misstated or omitted facts relevant to the determination of whether compensation is due under this Act or of the amount of that compensation, whether in making application for compensation or in the further proceedings provided for in this Act, shall be guilty of a Class A misdemeanor.

P.A. 78-359, § 20, added by P.A. 81-1013, § 1, eff. Sept. 22, 1979.

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1005-5-3. Disposition

§ 5-5-3. Disposition. (a) Every person convicted of an offense shall be sentenced as provided in this Section.

(b) The following options shall be appropriate dispositions, alone or in combination, for all felonies and misdemeanors other than those identified in subsection (c) of this Section:

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(7) An order directing the offender to make restitution to the victim under Section 5-5-6² of this Code.

However, neither a fine nor restitution shall be the sole disposition for a felony and either or both may be imposed only in conjunction with another disposition.

(c)(1) When a defendant is found guilty of murder the State may either seek a sentence of imprisonment under Section 5-8-1³ of this Code, or where appropriate seek a sentence of death under Section 9-1 of the Criminal Code of 1961.⁴

(2) A period of probation, a term of periodic imprisonment or conditional discharge shall not be imposed for the following offenses. The court shall sentence the offender to not less than the minimum term of imprisonment set forth in this Code for the following offenses, and may order a fine or restitution or both in conjunction with such term of imprisonment:

(3) The court may sentence an offender convicted of a business offense or a petty offense or a corporation or unincorporated association convicted of any offense to:

(A) A period of conditional discharge;

(B) A fine;

(C) Make restitution to the victim under Section 5-5-6 of this Code.

1005-5-6. Restitution

§ 5-5-6. If restitution is part of the disposition, the defendant shall make restitution to the victim in accordance with the following:

(a) A pre-sentencing hearing shall be held to assess the financial capacity of the defendant to make restitution as well as to determine the amount and conditions of payment at the court's discretion.

(b) Restitution shall be made in an amount not to exceed the actual out of pocket expenses or loss to the victim proximately caused by the conduct of the defendant to be payable over a period not to exceed 5 years.

(c) Cash bond in excess of actual court costs may be used for restitution.

(d) Where the conditions of payment have not been satisfied, the court at any time prior to the expiration or termination of the period of payment may impose an additional period. The length of the additional period shall not be more than 2 years. Only the conditions of payment shall continue to apply during such additional period. The court shall retain all of the incidents of the original sentence, including the authority to modify or enlarge the conditions and to revoke the sentence if the conditions of payment are violated during such additional period.

* * *

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1005-6-3. Conditions of probation and of conditional discharge

§ 5-6-3. Conditions of Probation and of Conditional Discharge.

(a) The conditions of probation and of conditional discharge shall be that the person:

(1) not violate any criminal statute of any jurisdiction;

(b) The Court may in addition to other conditions require that the person:

(9) make restitution in an amount not to exceed actual out of pocket expenses or loss proximately caused by the conduct of the defendant. The court shall, in a pre-sentencing hearing, determine the amount and conditions of payment. Cash bond, in excess of actual court cost, may be made available as security for the amount of restitution at the discretion of the court. Where the conditions of payment have not been satisfied, the court, at any time prior to the expiration or termination of the period of probation or of conditional discharge, may impose an additional period not to exceed 2 years, during which the conditions of payment alone shall remain in force. The court shall retain all of the incidents of the original sentence, including the authority to modify or enlarge the conditions and to revoke the sentence of probation or of conditional discharge if the conditions of payment are violated during such additional period;

(12) comply with the terms and conditions of an order of protection issued to a victim by the court pursuant to the Illinois Domestic Violence Act, as now or hereafter amended.

1005-6-3.1. Incidents and conditions of supervision

§ 5-6-3.1. Incidents and Conditions of Supervision. (a) When a defendant is placed on supervision, the court shall enter an order for supervision specifying the period of such supervision, and shall defer further proceedings in the case until the conclusion of the period.

(b) The period of supervision shall be reasonable under all of the circumstances of the case, but may not be longer than 2 years.

(c) The court may in addition to other reasonable conditions relating to the nature of the offense or the rehabilitation of the defendant as determined for each defendant in the proper discretion of the court require that the person:

(9) make restitution or reparation in an amount not to exceed actual loss or damage to property and pecuniary loss. The court shall determine the amount and conditions of payment;

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(11) comply with the terms and conditions of an order of protection issued to a victim by the court pursuant to the Illinois Domestic Violence Act, as now or hereafter amended.

Chapter 70

CRIMINAL VICTIMS' ESCROW ACCOUNT ACT

Cross References

Actions for damages, limitations, see ch. 110, § 13-202.

401. Short title

§ 1. Short title. This Act may be known and shall be cited as the "Criminal Victims' Escrow Account Act".

P.A. 81-906, § 1, eff. Sept. 22, 1979.

Section 14 of P.A. 81-906, approved Sept. 22, 1979, provided:

"Effective date. This Act shall take effect upon its becoming law."

Title of Act:

An Act to recompense criminal victims from the commercial proceeds arising from the crimes of the criminal of whom they were victims and to amend other Acts therein named. P.A. 81-906, approved and eff. Sept. 22, 1979.

402. Definitions

§ 2. Definitions. The following words and phrases when used in this Act shall, for the purposes of this Act, have the meanings respectively ascribed to them except when the context requires otherwise.

P.A. 81-906, § 2, eff. Sept. 22, 1979.

402.1. Person

§ 2.1. "Person" means every natural person, firm, partnership, association, corporation or other legal entity.

P.A. 81-906, § 2.1, eff. Sept. 22, 1979.

402.2. Treasurer

§ 2.2. "Treasurer" means the State Treasurer of the State of Illinois.

P.A. 81-906, § 2.2, eff. Sept. 22, 1979.

402.3. Victim

§ 2.3. "Victim" means a person killed or physically injured in this State as a result of a crime perpetrated or attempted against that person.

P.A. 81-906, § 2.3, eff. Sept. 22, 1979.

403. Escrow account

§ 3. Escrow Account. Any person who has been charged with or convicted of a crime in this State, involving a victim as described in Section 2.3, who contracts with a person, or the representative or assignee of such person, with respect to the depiction of the crime in a movie, book, magazine article, radio or television production, or live presentation of any kind, or with respect to that person's thoughts, feelings, opinions, or emotions regarding the crime, shall file a copy of such contract with the Treasurer. The person with whom the person charged or convicted has

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contracted shall pay over to the Treasurer any money which would otherwise, by terms of the contract, be owing to the person charged or convicted or his representatives. The Treasurer shall establish by deposit, within 3 days of receipt of such moneys, an escrow account in the name of the person charged or convicted for the benefit of and payable to any victim of crimes committed by such person. A victim who brought a civil action within 2 years of the date of the establishment of the escrow account shall be entitled to an amount, subject to the limitations of Sections 7 and 8,² from the appropriate escrow account equal to the amount of an unsatisfied judgment or a partially satisfied judgment against the person or his representative entered in a court of competent jurisdiction in an action arising out a crime committed by the person.

P.A. 81-906, § 3, eff. Sept. 22, 1979.

¹ Paragraph 402.3 of this chapter.

² Paragraphs 407 and 408 of this chapter.

404. Victim's notice of intent to file a claim

§ 4. Victim's notice of intent to file claim. A victim of a crime committed by a person in whose name an escrow account is established must register a notice of intent to file a claim against such escrow account, pursuant to a judgment, a pending lawsuit or a prospective lawsuit, with the Treasurer within one year of the establishment of the escrow account. A failure to comply with this requirement shall forfeit a victim's rights in such escrow account as against other victims but a failure to file such notice shall not bar a claim against such escrow account filed within 2 years of the establishment of such account.

P.A. 81-906, § 4, eff. Sept. 22, 1979.

405. Notice to victims

§ 5. Notice to Victims. The Treasurer shall notify any person who has registered with the Treasurer as a victim of a crime committed by an individual, identified by name, at the time the Treasurer receives such escrow moneys for that individual. The Treasurer shall also, at least once every 6 months for 2 years from the date he or she receives such escrow moneys, cause to have published a notice in newspapers of general circulation in each county of the State advising victims that such escrow moneys are available to satisfy judgments pursuant to this Act.

P.A. 81-906, § 5, eff. Sept. 22, 1979.

406. Release of escrow account

§ 6. Release of escrow account. The Treasurer shall immediately pay over any moneys in an escrow account to a person in whose name an escrow account was established upon:

(1) dismissal or acquittal of the charges, which arose from the same circumstances which gave rise to the establishment of the escrow account, against such person, or

(2) a showing by such person that 2 years have elapsed from the establishment of such escrow account and that no civil actions are pending or registered under Section 4¹ with the Treasurer against such person.

P.A. 81-906, § 6, eff. Sept. 22, 1979.

¹ Paragraph 404 of this chapter.

407. Payments from escrow account for legal representation—Notice

§ 7. (a) Notwithstanding other Sections of this Act and subject only to subsection (b) herein, the Treasurer may, upon an order of a court of competent jurisdiction, make payments from a person's escrow account to that person for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such person or a civil action arising out of a crime brought by a victim or his personal representative, including the appeals process.

(b) Moneys shall be paid out of a person's escrow account pursuant to this Section only:

1) Upon 15 days notice to victims or their representatives, the Treasurer and to the State's Attorney for the county in which the account is located; and

2) When such amounts are fair and reasonable, as determined by the order of a court of competent jurisdiction which authorizes such payment.

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Chapter 53

408. Prorated payments on basis of judgments

§ 8. Prorated payment of basis of judgments. When an escrow account has insufficient funds to meet all judgments presented by victims or their representatives, the escrow account shall be prorated among the victims or their representatives on the basis of the amounts of the unsatisfied judgments or partially satisfied judgments. There shall be no payment from the escrow account to a victim or his representative until either the amounts of all unsatisfied judgments are determined or it is determined that the payment for an unsatisfied judgment will not so diminish the escrow account so that other potential victim claims could not be satisfied.

P.A. 81-906, § 8, eff. Sept. 22, 1979.

409. Penalty for failure to pay moneys to Treasurer

§ 9. Penalty for failure to pay moneys to Treasurer. Any person who fails to comply with the payment requirement of Section 3¹ shall be guilty of a Business Offense punishable by a fine of no less than \$5,000.

P.A. 81-906, § 9, eff. Sept. 22, 1979.

¹ Paragraph 403 of this chapter.

410. Void agreements

§ 10. Void agreements. Any action taken by any person, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this Act shall be null and void as against the public policy of this State.

P.A. 81-906, § 10, eff. Sept. 22, 1979.

FEES OF WITNESSES

65. Per diem and mileage

§ 47. Every witness attending in any county upon trials in the courts shall be entitled to receive the sum of \$20.00 for each day's attendance and 20 cents per mile each way for necessary travel. For attending in a foreign county, each day's travel shall constitute a day of attendance. Every person attending for the purpose of having his deposition taken shall receive the same per diem and mileage as provided in this section for witnesses in circuit courts: Provided, no allowance or charge shall be made for the attendance of witnesses aforesaid unless the witness shall make affidavit of the number of days he or she actually attended, and that such attendance was at the instance of one or both of the parties or his attorney. In criminal cases where a witness shall be required to attend from a foreign county or state, either before the grand jury or at the trial of the cause in the court, he shall receive the same per diem and mileage as above provided for witnesses in circuit courts to be paid out of the county treasury of the county where the crime was committed on the certificate of the clerk of the court where the trial is being had: Provided, he shall make affidavit of the distance traveled, that it was the usually traveled and most direct route, of the number of days' actual travel and attendance, and that such attendance was at the instance of the State's Attorney or the accused, or his attorney, to which shall be added the certificate of the judge that the amount is reasonable and that he was a material witness in the court or before the grand jury.

Amended by P.A. 80-392, § 1, eff. Oct. 1, 1977.

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Chapter 38

32-4. Communicating with jurors and witnesses

§ 32-4. Communicating with jurors and witnesses. (a) A person who, with intent to influence any person whom he believes has been summoned as a juror, regarding any matter which is or may be brought before such juror, communicates, directly or indirectly, with such juror otherwise than as authorized by law commits a Class 4 felony.

(b) A person who, with intent to deter any party or witness from testifying freely, fully and truthfully to any matter pending in any court, or before a Grand Jury, Administrative agency or any other State or local governmental unit, forcibly detains such party or witness, or communicates, directly or indirectly, to such party or witness any knowingly false information or a threat of injury or damage to the property or person of such party or witness or to the property or person of any relative of such party or witness, or offers or delivers money or another thing of value to such party or witness or to a relative of such party or witness, commits a Class 4 felony.

32-4a. Harassment of jurors and witnesses

§ 32-4a. Harassment of jurors and witnesses. A person who, with intent to harass or annoy one who has served as a juror or as a witness in a legal proceeding, because of the verdict returned by the jury therein or the participation of such juror in the verdict or because of the testimony of such witness, communicates directly or indirectly with the juror or witness in such manner as to produce mental anguish or emotional distress or who conveys a threat of injury or damage to the property or person of such party or witness or to the property or person of any relative of such party or witness commits a Class 4 felony.

* * *

1005-3-2. Presentence report

§ 5-3-2. Presentence Report. (a) The presentence report shall set forth:

(1) the defendant's history of delinquency or criminality, physical and mental history and condition, family situation and background, economic status, education, occupation and personal habits;

(2) information about special resources within the community which might be available to assist the defendant's rehabilitation, including treatment centers, residential facilities, vocational training services, correctional manpower programs, employment opportunities, special educational programs, alcohol and drug abuse programming, psychiatric and marriage counseling, and other programs and facilities which could aid the defendant's successful reintegration into society;

(3) the effect the offense committed has had upon the victim or victims thereof, and any compensatory benefit that various sentencing alternatives would confer on such victim or victims;

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155-3. Subpoenaed crime witnesses—Discharge or termination of employment for attending criminal proceedings

§ 8. No employer shall discharge or terminate, or threaten to discharge or terminate, from his employment, or otherwise punish or penalize any employee of his who is a witness to a crime, because of time lost from regular employment resulting from his attendance at any proceeding pursuant to subpoena issued in any criminal proceeding relative to such crime. Any employer who shall knowingly or intentionally violate this section shall be proceeded against and punished for contempt of court. This section shall not be construed as requiring an employer to pay an employee for time lost resulting from attendance at any proceeding.

R.S.1874, p. 348, div. 13, § 8, added by P.A. 81-808, § 1, eff. Jan. 1, 1980.

* * *

RETENTION OF PROPERTY AS EVIDENCE IN CRIMINAL PROCEEDINGS—INSURANCE

PUBLIC ACT 83-851

SENATE BILL 991

AN ACT in relation to certain evidence in criminal proceedings, to the investigation and prosecution of certain criminal offenses and to insurance fraud, claims, policies and assessments.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 115-9 of the "Code of Criminal Procedure of 1963", approved August 14, 1963, as amended, is amended to read as follows:

(Ch. 38, par. 115-9)[S.H.A. ch. 38, § 115-9]

Sec. 115-9. (a) In a prosecution for theft, retail theft, deceptive practice, robbery, armed robbery, burglary or residential burglary, the court shall receive as competent evidence, a photograph of property over which the accused is alleged to have exerted unauthorized control, or to have otherwise obtained unlawfully, if the photograph:

(1) will serve the purpose of demonstrating the nature of the property; and

(2) is otherwise admissible into evidence under all other rules of law governing the admissibility of photographs into evidence. The fact that it is impractical to introduce into evidence the actual property for any reason, including its size, weight, or unavailability, need not be established for the court to find a photograph of that property to be competent evidence. If a photograph is found to be competent evidence under this subsection, it is admissible into

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evidence in place of the property and to the same extent as the property itself.

(b) A law enforcement agency that is holding as evidence property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully, shall return that property to its owner if:

(1) the property has been photographed in a manner that will serve the purpose of demonstrating the nature of the property, and if these photographs are filed with or retained by the law enforcement agency in place of the property;

(2) receipt for the property is obtained from the owner upon delivery by the law enforcement agency;

(3) the prosecuting attorney who is prosecuting a case that involves the property has not requested the law enforcement agency to decline requests for return of the property to its owner; and

(4) the property may be lawfully possessed by the owner.

~~(c) Subsections (a) and (b) of this Section apply only to theft, retail theft, deceptive practices, robbery, armed robbery or burglary of tangible personal property which is displayed, held, stored or offered for sale to the public, by a person or entity holding a Retailers Occupation Tax Number issued by the State of Illinois.~~

(c) ~~(d)~~ Notwithstanding the provisions of subsection (b) of this Section a court may, if a motion so requesting is filed by defendant before expiration of the time period specified in subsection (d) of this Section within 14 days of arrest, order the law enforcement agency to hold such property as evidence pending completion of trial.

~~(d) The time period during which the defendant may file a motion with the court for retention of the property as evidence shall be as follows:~~

~~(1) If the property was being displayed, held, stored or offered for sale to the public by a person or entity holding a Retailers Occupation Tax Number issued by the State of Illinois, the time period shall expire 14 days after the arrest of the defendant;~~

~~(2) For all other property, the time period shall expire 30 days after the filing of an information or indictment, or in the case of misdemeanor charges within 30 days after the filing of a complaint.~~

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VIOLENT CRIME VICTIMS ASSISTANCE ACT

PUBLIC ACT 83-908

HOUSE BILL 22

AN ACT to provide assistance to victims of violent crime.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

[S.H.A. ch. 70, § 501]

Section 1. Short title. This Act shall be known and may be cited as the "Violent Crime Victims Assistance Act".

[S.H.A. ch. 70, § 502]

Section 2. Legislative findings and intent. The General Assembly finds that when crime strikes, the chief concern of criminal justice agencies has been apprehending and dealing with the criminal, and that the victim or witness is frequently forgotten or further victimized by the criminal justice system. Nevertheless, the single most important determinant of whether a case is resolved is the information and assistance provided by the victim or witness.

It is, therefore, the intent of the General Assembly to provide ways of improving attitudes of victims and witnesses toward the criminal justice system and to provide for faster and more complete victim recovery from the effects of crime through the establishment of victim and witness assistance centers.

All services and practices of each center shall further or complement the following goals:

(a) Assist the criminal justice agencies in giving more consideration and personal attention to victims and witnesses of violent crime;

(b) Sensitize law enforcement officials and others who come into contact with crime victims and witnesses;

(c) Attempt to decrease the incidence of unreported crimes;

(d) Assure that victims and witnesses are informed of the progress of the cases in which they are involved;

(e) Encourage public use of the services made available under this Act.

This Act shall be construed to complement the provisions of the "Crime Victims Compensation Act" in meeting their common goals, but this Act shall be administered and funded as provided herein.

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[S.H.A. ch. 70, § 503]

Section 3. Definitions. As used in this Act:

- (a) "Advisory Commission" means the Violent Crimes Advisory Commission created in Section 4 of this Act;
- (b) "Fund" means the Violent Crime Victims Assistance Fund created in Section 10 of this Act;
- (c) "Agency" or "agencies" means any federal, State, local or private entity which provides, operates or coordinates victim and witness assistance programs.

¹ Paragraph 504 of this chapter.

² Paragraph 510 of this chapter.

[S.H.A. ch. 70, § 504]

Section 4. Advisory Commission created. There is created a Violent Crimes Advisory Commission, hereinafter called the Advisory Commission, consisting of 11 members: the Attorney General, or his or her designee who shall serve as Chairperson; 2 members of the House of Representatives, 1 to be appointed by the Speaker of the House and 1 to be appointed by the Minority Leader of the House; 2 members of the Senate, 1 to be appointed by the President of the Senate and 1 to be appointed by the Minority Leader of the Senate; and the following to be appointed by the Attorney General: 1 police officer; 1 State's Attorney from a county in Illinois; 1 health services professional possessing experience and expertise in dealing with the victims of violent crime; and 3 members of the public possessing experience and expertise in dealing with victims of violent crime, including experience with victims of domestic and sexual violence. The members of the Advisory Commission shall be appointed biennially for terms expiring on July 1 of each succeeding odd-numbered year and shall serve until their respective successors are appointed or until termination of their legislative service, whichever first occurs. The members of the Commission shall receive no compensation for their services but shall be reimbursed for necessary expenses incurred in the performance of their duties. Vacancies occurring because of death or resignation shall be filled by the appointing authority for the group in which the vacancy occurs.

Six members of the Advisory Commission shall constitute a quorum for the transaction of business, and the concurrence of at least 6 members shall be necessary to render a determination, decision or recommendation by the Advisory Committee. In addition to the Attorney General, who shall serve as Chairperson, the Advisory Commission may select such other officers as it deems necessary.

[S.H.A. ch. 70, § 505]

Section 5. Advisory Commission. General responsibilities. (a) The Advisory Commission shall have the following responsibilities:

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(1) To study the operation of all Illinois laws, practices, agencies and organizations which affect victims of crime;

(2) To promote and conduct studies, research, analysis and investigation of matters affecting the interests of crime victims;

(3) To recommend legislation to develop and improve policies which promote the recognition of the legitimate rights, needs and interests of crime victims;

(4) To serve as a clearinghouse for public information relating to crime victims' problems and programs;

(5) To coordinate, monitor and evaluate the activities of programs operating under this Act;

(6) To make any necessary outreach efforts to encourage the development and maintenance of services throughout the State, with special attention to the regions and neighborhoods with the greatest need for victim assistance services;

(7) To perform other activities in cooperation with the Attorney General, which the Advisory Commission considers useful to the furtherance of the stated legislative intent;

(8) To make an annual report to the General Assembly;

(b) The Advisory Committee may also perform any of the functions enumerated in subparagraph (a) of this section relative to witnesses to crime.

[S.H.A. ch. 70, § 506]

Section 6. Attorney General - Organization of Programs. During the period between January 1, 1984 and June 30, 1984, the Attorney General, in cooperation with the Advisory Commission, shall establish rules and regulations for the performance of his or her activities under this Act, including procedures for the designation and funding of victims' assistance centers; thereafter, he or she shall:

(a) Adopt and publicize the concept of victim and witness assistance centers, including guidelines for applications, selection and operation of centers;

(b) Receive and, when appropriate, solicit applications from agencies for funding of centers;

(c) Designate agencies and award grants to operate centers;

(d) Accept any grant, including federal grants, or gift to promote the purposes of this Act.

[S.H.A. ch. 70, § 507]

Section 7. Administration of Fund. The Attorney General shall administer the disbursement of monies collected by the Fund in accordance with the following procedures.

(a) Any public or private nonprofit agency may apply to the Attorney General for selection and funding as a victim and witness assistance center pursuant to this Act.

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(b) The Attorney General shall consider the following factors together with any other circumstances he or she deems appropriate in selecting applicants to receive funds and to be designated as victim and witness assistance centers:

- (1) Stated goals of applicants;
- (2) Commitment and ability to provide the services described in Section 8 of this Act;
- (3) Number of people to be served and the needs of the community;
- (4) Evidence of community support;
- (5) Organizational structure of the agency;
- (6) Maximization of volunteers.

(c) After evaluation of all applicants, the Attorney General shall select a number of applicants which the Attorney General deems qualified under this Act for designation to receive funding pursuant to this Act for the establishment and operation of the centers. Grants shall be made on a semi-annual basis. The total of grants made and Attorney General expenses for any half-year shall not exceed the total amount of funds collected or received in the previous half-year period. The Attorney General may impose matching funds requirements on grant recipients.

Paragraph 508 of this chapter.

[S.H.A. ch. 70, § 508]

Section 8. Centers - Services provided. (a) Each center shall provide one or more of the following services:

- (1) Coordinate volunteers to work with criminal justice agencies to provide direct victim services or to establish community support;
- (2) Provide assistance to victims of violent crime and their families in obtaining assistance through other official or community resources;
- (3) Provide elderly victims of crime with services appropriate to their special needs;
- (4) Provide transportation and/or household assistance to those victims participating in the criminal justice process;
- (5) Provide victims of domestic and sexual violence with services appropriate to their special needs;
- (6) Provide courthouse reception and guidance, including explanation of unfamiliar procedures and bilingual information;
- (7) Provide in-person or telephone hot-line assistance to victims;
- (8) Provide special counseling facilities and rehabilitation services to victims;
- (9) Provide other services as the Commission shall deem appropriate to further the purposes of this Act;

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(10) Provide public education on crime and crime victims;

(11) Provide training and sensitization for persons who work with victims of crime.

(b) Such centers may provide one or more of the services enumerated in subparagraph (a) of this section for witnesses of crime.

[S.H.A. ch. 70, § 509]

Section 9. Centers - Accountability to Attorney General. Each center shall provide the Attorney General periodic reports on the activities of the center. Submission of any such reports as the Attorney General shall require is a prerequisite to renewal of any grant awarded under this Act.

[S.H.A. ch. 70, § 510]

Section 10. Violent Crime Victims Assistance Fund. (a) The "Violent Crime Victims Assistance Fund" is created as a special fund in the State Treasury to provide monies for the grants to be awarded under this Act.

(b) When any person is convicted in Illinois after January 1, 1984 of an offense listed below, the court which enters the conviction shall impose, in addition to any other penalty authorized by law, a fine in accordance with the following schedule:

(1) \$25.00, for conviction of a crime of violence, as defined in Section 2 (c) of the "Crime Victims Compensation Act", approved August 23, 1973, as amended;

(2) \$20.00, for conviction of any other felony or misdemeanor;

(3) \$10.00, for conviction of any offense listed in Section 6-205 of "The Illinois Vehicle Code", approved September 29, 1969, as amended; and

(4) \$3.00, for any other offense under "The Illinois Vehicle Code", exclusive of offenses enumerated in Section 6-204(a) (2) of that Code, and exclusive of any offenses enumerated in ARTICLE VI of Chapter 11 of The Illinois Vehicle Code relating to restrictions, regulations and limitations on the speed at which a motor vehicle is driven or operated.

If any offense falls into more than one of the above categories, the fine imposed by this Act shall be the amount applicable to the most serious offense.

(c) All fines collected in accordance with this Section shall be transferred to the State Treasurer, who shall retain such moneys separate in the "Violent Crime Victims Assistance Fund". The Treasurer shall provide the Attorney General a monthly status report on the amount of money in the Fund.

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(d) Monies from the fund may be granted on and after July 1, 1984.

¹ Paragraph 72 of this chapter.

² Chapter 95½, § 6-205.

³ Chapter 95½, § 1-100 et seq.

⁴ Chapter 95½, § 6-204.

⁵ Chapter 95½, § 11-601 et seq.

[S.H.A. ch. 70, § 511]

Section 11. Severability. The invalidity of any provision of this Act shall not affect the validity of the remainder of this Act.

Section 12. Section 5.107 is added to "An Act in relation to State finance", approved June 10, 1919, as amended, the added Section to read as follows:

(Ch. 127, new par. 141.107) [S.H.A. ch. 127, § 141.107]

Sec. 5.107. The Violent Crime Victims Assistance Fund.

VETO OVERRIDDEN: Nov. 2, 1983 EFFECTIVE: Jan. 1, 1984

* * *

(b) the following factors may be considered by the court as reasons to impose an extended term sentence under Section 5-8-2² upon an offender who was at least 17 years old on the date the crime was committed:

(3) When a defendant is convicted of any felony committed against:

(i) a person under 12 years of age at the time of the offense;

(ii) a person 60 years of age or older at the time of the offense; or

Chapter 111-1/2

RAPE VICTIMS EMERGENCY TREATMENT ACT

Section

87-1. Short title.

87-2. Hospitals to furnish emergency service.

87-3. Community or areawide plan for emergency services to rape victims.

87-4. Community or areawide plans—Submission to department.

87-5. Minimum requirements for hospitals providing emergency service to rape victims.

87-6. Powers and duties of Department of Public Health.

87-6.1. Implementation of Act.

87-6.2. Emergency services—Development and operation of programs.

87-6.3. Reimbursement of hospital costs.

87-7. Hospital charges and reimbursement.

87-8. Penalties.

87-9. Abortion services not required by Act.

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§ 87-1. Short title

This Act shall be known and may be cited as the "Rape Victims Emergency Treatment Act".

P.A. 79-564, § 1, eff. Jan. 1, 1976.

(Ch. 111 1/2, par. 87-2) [S.H.A. ch. 111½, § 87-2]

Sec. 2. Hospitals to furnish emergency service. Every hospital required to be licensed by the Department of Public Health pursuant to the Hospital Licensing Act, approved July 1, 1953, as now or hereafter amended, which provides general medical and surgical hospital services shall provide emergency hospital service, in accordance with rules and regulations adopted by the Department of Public Health, to all alleged rape victims who apply for such hospital emergency services in relation to injuries or trauma resulting from the rape.

In addition every such hospital, regardless of whether or not a request is made for reimbursement, except hospitals participating in community or area wide plans in compliance with Section 4 of this Act,² shall submit to the Department of Public Health a plan to provide hospital emergency services to alleged rape victims which shall be made available by such hospital. Such plan shall be submitted by January 1, 1984, to the Department of Public Health for approval prior to such plan becoming effective. The Department of Public Health shall approve such plan for emergency service to alleged rape victims if it finds that the implementation of the proposed plan would provide adequate hospital emergency service for alleged rape victims.

The Department shall periodically conduct on site reviews of such approved plans with hospital personnel to insure that the established procedures are being followed.

§ 87-3. Community or areawide plan for emergency services to rape victims

A hospital is authorized to participate, in conjunction with one or more other hospitals or health care facilities, in a community or area-wide plan for the furnishing of hospital emergency service to alleged rape victims on a community or areawide basis provided each hospital participating in such a plan shall furnish such hospital emergency services as it is designated to provide in the plan agreed upon by the participating hospitals to any alleged rape victim who applies for such hospital emergency services in relation to injuries or trauma resulting from the rape.

P.A. 79-564, § 3, eff. Jan. 1, 1976.

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§ 87-4. Community or areawide plans—Submission to department

Community or areawide plans may be developed by the hospitals or other health care facilities in the community or area to be served, and shall provide for the hospital emergency services to alleged rape victims which shall be made available by each of the participating hospitals. All such plans shall be submitted to the Department of Public Health for approval prior to such plan becoming effective. The Department of Public Health shall approve such plan for community or areawide hospital emergency service to alleged rape victims if it finds that the implementation of the proposed plan would provide an adequate hospital emergency service for the people of the community or area to be served.

P.A. 79-564, § 4, eff. Jan. 1, 1976.

§ 87-5. Minimum requirements for hospitals providing emergency service to rape victims

Every hospital providing emergency hospital services to an alleged rape victim under this Act shall, as minimum requirements for such services, provide, with the consent of the alleged rape victim, and as ordered by the attending physician, the following:

(1) appropriate medical examinations and laboratory tests required to ensure the health, safety, and welfare of an alleged rape victim or which may be used as evidence in a criminal proceeding against a person accused of the rape, or both; and records of the results of such examinations and tests shall be maintained by the hospital and made available to law enforcement officials upon the request of the alleged rape victim;

(2) appropriate oral and written information concerning the possibility of infection, venereal disease and pregnancy resulting from rape;

(3) appropriate oral and written information concerning accepted medical procedures, medication, and possible contraindications of such medication available for the prevention or treatment of infection or disease resulting from rape;

(4) such medication as deemed appropriate by the attending physician;

(5) a blood test to determine the presence or absence of venereal disease;

(6) written or oral instructions indicating the need for a second blood test 6 weeks after the rape to determine the presence or absence of venereal disease; and

(7) appropriate counseling as determined by the hospital, by trained personnel designated by the hospital.

P.A. 79-564, § 5, eff. Jan. 1, 1976.

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§ 87-6. Powers and duties of Department of Public Health

The Department of Public Health shall have the duties and responsibilities required by Section 6.1 through 6.3.¹

P.A. 79-564, § 6, eff. Jan. 1, 1976.

§ 87-6.1. Implementation of Act

To prescribe minimum standards, rules and regulations pursuant to the Illinois Hospital Licensing Act approved July 1, 1953, as now or hereafter amended,¹ necessary to implement this Act, which shall apply to every hospital required to be licensed by the Department of Public Health. Such standards shall include, but not be limited to, a uniform system for recording results of medical examinations and all diagnostic tests performed in connection therewith to determine the condition and necessary treatment of alleged rape victims, which results shall be preserved in a confidential manner as part of the hospital record of the patient.

P.A. 79-564, § 6.1, eff. Jan. 1, 1976.

¹ Chapter 111½, § 142 et seq.

Library References

Hospitals 6-3.

C.J.S. Hospitals § 5.

§ 87-6.2. Emergency services—Development and operation of programs

To assist in the development and operation of programs which provide emergency services to alleged rape victims, and, where necessary, to provide grants to hospitals for this purpose.

P.A. 79-546, § 6.2, eff. Jan. 1, 1976.

87-6.3. Reimbursement of hospital and ambulance costs

§ 6.3. To establish standards, rules and regulations, for the reimbursement to hospitals and ambulance providers of costs of providing services to alleged rape victims and alleged victims of deviate sexual assault, pursuant to Section 7 of this Act.¹

Amended by P.A. 81-716, § 1, eff. Jan. 1, 1980.

¹ Paragraph 87-7 of this chapter.

Notes of Decisions

1. Construction and application

The Department of Public Health may not arbitrarily refuse to reimburse hospitals for

medical services rendered rape victims pending Department's failure to formally adopt rules pursuant to this paragraph. 1976 Op.Atty.Gen. No. S-1149.

87-7. Hospital charges and reimbursement

§ 7. Hospital charges and reimbursement. When any hospital or ambulance provider furnishes emergency services to any alleged rape victim, or any alleged victim of deviate sexual assault as defined by the Department of Public Health pursuant to Section 6.3 of this Act,¹ who is neither eligible to receive such services under The Illinois Public Aid Code² nor covered as to such services by a policy of insurance, the hospital and ambulance provider shall furnish such services to that person without charge and shall be entitled to be reimbursed for its costs in providing such services by the Department of Public Health.

Amended by P.A. 81-1182, § 1, eff. July 1, 1980.

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§ 87-8. Penalties

Any hospital violating any provisions of this Act shall be guilty of a petty offense for each violation, and any fine imposed shall be paid into the general corporate funds of the city, incorporated town or village in which the hospital is located, or of the county, in case such hospital is outside the limits of any incorporated municipality.

P.A. 79-564, § 8, eff. Jan. 1, 1976.

Library References

Hospitals 7.

C.J.S. Hospitals § 8.

§ 87-9. Abortion services not required by Act

Nothing in this Act shall be construed to require a hospital to provide any services which relate to an abortion.

P.A. 79-564, § 9, eff. Jan. 1, 1976.

* * *

1408.4. Sexual assault victims—Coverage of expenses—Recovery of state funds—Reimbursement of Department of Public Health

§ 8.4. (1) Policies, contracts or subscription certificates issued by a Health Maintenance Organization corporation, which provide benefits for hospital or medical expenses based upon the actual expenses incurred, shall to the full extent of coverage provided for any other emergency or accident care, provide for the payment of actual expenses incurred, without offset or reduction for benefit deductibles or co-insurance amounts, in the examination and testing of a victim of rape, attempted rape or other sexual assault to establish that sexual contact did occur or did not occur, and to establish the presence or absence of venereal disease or infection, and examination and treatment of injuries and trauma sustained by a victim of rape, attempted rape or other sexual assault.

(2) For purposes of enabling the recovery of State Funds, any health care service corporation subject to this Section shall upon reasonable demand by the Department of Public Health disclose the names and identities of its insureds or subscribers entitled to benefits under this provision to the Department of Public Health whenever the Department of Public Health has determined that it has paid, or is about to pay, hospital or medical expenses for which a health care service corporation is liable under this Section. All information received by the Department of Public Health under this provision shall be held on a confidential basis and shall not be subject to subpoena and shall not be made public by the Department of Public Health or used for any purpose other than that authorized by this Section.

(3) Whenever the Department of Public Health finds that it has paid all or part of any hospital or medical expenses which a health care service corporation is obligated to pay under this Section, the Department of Public Health shall be entitled to receive reimbursement for its payments from such corporation provided that the Department of Public Health has notified the corporation of its claims before the corporation has paid such benefits to its subscribers or in behalf of its subscribers.

P.A. 78-1151, § 8.4, added by P.A. 82-885, § 4, eff. Jan. 24, 1983.

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Chapter 38

115-10. Sexual acts on child under 12—Hearsay exceptions

§ 115-10. In a prosecution for a sexual act perpetrated upon a child under the age of 12, including but not limited to prosecutions for violations of Sections 11-1 through 11-5 of the Criminal Code of 1961,¹ the following evidence shall be admitted as an exception to the hearsay rule:

(1) testimony by such child that he or she complained of such act to another; and
(2) testimony by the person to whom the child complained that such complaint was made in order to corroborate the child's testimony.

Laws 1963, p. 2836, § 115-9, added by P.A. 82-782, § 1, eff. Jan. 1, 1983. Renumbered § 115-10 and amended by P.A. 82-1057, Art. II, § 7, eff. Feb. 11, 1983.

¹ Paragraphs 11-1 to 11-5 of this chapter.

Another § 115-10 was renumbered as § 115-11.

P.A. 82-1057, Art. II, § 1 of the 2nd 1982 Revisory Act provided:

"This Article provides for the nonsubstantive revision or renumbering or repeal of Sections of Acts necessitated by the amendment, addition or repeal of Sections by 2 or more Public Acts of the 82nd General Assembly, through Public

Act 82-1016, which multiple action was not resolved by one of the Acts affecting the particular Section."

For provisions of P.A. 82-1057, Art. IV relating to effective dates, see note following ch. 15½, ¶ 68.15b.

Library References

Infants 20.

C.J.S. Infants §§ 95, 100 to 107.

115-11. Prosecutions for sex offenses—Victims under 13 years—Persons excluded from proceedings

§ 115-11. In a prosecution for a criminal offense defined in Article 11 of the "Criminal Code of 1961",¹ where the alleged victim of the offense is a minor under 13 years of age, the court may exclude from the proceedings while the victim is testifying, all persons, who, in the opinion of the court, do not have a direct interest in the case, except the media.

Chapter 38

206-5.1. Reporting of domestic crime

§ 5.1. Reporting of domestic crime. All law enforcement agencies in Illinois which have received complaints and had its officers investigate any alleged commission of a domestic crime, shall indicate the incidence of any alleged commission of said crime with the Department through the Illinois Uniform Crime Reporting System as part of the data reported pursuant to Section 8 of this Act.¹

Domestic crime for the purposes of this Section means any crime attempted or committed between husband and wife or between members of the same family or household.

Laws 1981, p. 464, § 5.1, added by P.A. 81-921, § 1, eff. Jan. 1, 1980.

¹ Paragraph 206-8 of this chapter.

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Chapter 40

ILLINOIS DOMESTIC VIOLENCE ACT

ARTICLE I—GENERAL PROVISIONS

Par. 2301-1. Short Title.	Par. 2301-2. Purposes—Rules of construction. 2301-3. Definitions.
Cross References Compliance with orders of protection, conditions of probation and conditional discharge, see ch. 38, §§ 1005-6-3, 1005-6-3.1. Probation and conditional discharge, conditions of, see ch. 38, § 1005-6-3.	Supervision, incidents and conditions of, see ch. 38, § 1005-6-3.1. Library References Breach of the Peace § 16. C.J.S. Breach of the Peace § 17.
2301-1. Short title. § 101. Short title: This Act shall be known and may be cited as the Illinois Domestic Violence Act. P.A. 82-621, § 101, eff. March 1, 1982.	
Title of Act: An Act concerning abuse between family or household members. P.A. 82-621, approved Sept. 24, 1981, eff. March 1, 1982.	
2301-2. Purposes—Rules of construction § 102. Purposes; rules of construction. This Act shall be liberally construed and applied to promote its underlying purposes, which are to: (1) Recognize domestic violence as a serious crime against the individual and society which produces family disharmony in thousands of Illinois families, promotes a pattern of escalating violence which frequently culminates in intrafamily homicide, and creates an emotional atmosphere that is not conducive to healthy childhood development; (2) Recognize that victims of domestic violence are often emotionally and financially dependent on their abuser and are therefore unable to appropriately protect themselves from violence; (3) Provide tools for law enforcement officers to provide immediate, effective assistance and protection of victims of domestic violence, recognizing that law enforcement officers often become the secondary victims of domestic violence in the high rates of police injuries and deaths that occur in response to domestic violence calls; and (4) Expand the civil and criminal remedies for victims of domestic violence, including, if necessary, the physical separation of the parties to prevent further abuse. P.A. 82-621, § 102, eff. March 1, 1982.	
2301-3. Definitions § 103. Definitions. For the purposes of this Act, the following terms shall have the following meanings: (1) "Abuse" means the act of striking, threatening, harassing or interfering with the personal liberty of any family or household member by any other family or household member, but excludes any reasonable discipline of a minor child by a parent or person in loco parentis of such minor child. (2) "Family or household members" means spouses, individuals who were formerly spouses, individuals sharing a common household, parents and children, or persons related by blood or marriage. (3) "Order of protection" means a final, preliminary or temporary order granted by the court which may include any or all of the remedies outlined in Section 208 of this Act, ¹ Sections 109-1 and 111-8 of the Code of Criminal Procedure of 1963, ² Section 5-5 of the Juvenile Court Act, ³ or Sections 5-6-3 or 5-6-3.1 of the Unified Code of Corrections, as now or hereafter amended. ⁴ P.A. 82-621, § 103, eff. March 1, 1982. Amended by P.A. 82-888, § 1, eff. Aug. 5, 1982.	

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- ¹ Paragraph 2302-8 of this chapter.
- ² Chapter 38, §§ 109-1 and 111-8.
- ³ Chapter 37, § 705-5.
- ⁴ Chapter 38, § 1005-6-3 or 1005-6-3.1.

P.A. 82-888, in subd. (1), substituted "excludes any" for "excluding"; and in subd. (2), inserted "or persons related by blood or marriage".
Section 4 of P.A. 82-888 approved Aug. 5, 1982, provided:
"This Act takes effect upon its becoming a law."

ARTICLE II—ORDERS OF PROTECTION

Par. 2302-1. Power of the circuit courts.	Par. 2302-7. Petitions of poor persons.
2302-2. Commencement of action—Pleading.	2302-8. Order of protection—Remedies.
2302-3. Service of process.	2302-9. Orders of protection—Contents.
2302-4. Ex parte orders.	2302-10. Notice to parties and law enforcement agencies.
2302-5. Venue.	2302-11. Duration of orders.
2302-6. Application of Civil Practice Law.	2302-12. Enforcement of orders.
	2302-13. Trial by jury.

2302-1. Power of the circuit courts

§ 201. Power of the circuit courts. The circuit courts shall have the power to issue orders of protection.
P.A. 82-621, § 201, eff. March 1, 1982.

2302-2. Commencement of action—Pleading

§ 202. Commencement of action; pleading. (a) Actions for order of protection are commenced:

(1) By requesting an order of protection as preliminary or post-judgment relief or as a component of the final judgment in a proceeding under the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended;¹ or

(2) By filing a petition for an order of protection; or

(3) By requesting, through the respective State's Attorneys, an order of protection in a criminal proceeding during pre-trial release of a defendant or as a condition of probation, conditional discharge or supervision.

(b) A person may seek an order of protection (1) for herself or himself; (2) on behalf of a minor child; or (3) on behalf of any person prevented by physical or mental incapacity or because of advanced age from seeking an order of protection on his or her behalf.

(c) All petitions seeking an order of protection shall allege abuse by a family or household member and be verified or accompanied by affidavit.

P.A. 82-621, § 202, eff. March 1, 1982. Amended by P.A. 82-888, § 1, eff. Aug. 5, 1982.

¹ Paragraph 101 et seq. of this chapter.

P.A. 82-888, in subd. (b)(3), inserted "or because of advanced age".

2302-3. Service of process

§ 203. Service of process. (a) When an action for an order of protection is commenced by filing a petition for an order of protection, as provided by paragraph (2) of subsection (a) of Section 202 herein,¹ the summons and that petition shall be personally served upon the respondent. The summons shall require the respondent to file an appearance not later than 7 days after service, shall be served by a sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature.

(b) When an action for an order of protection is commenced in conjunction with a proceeding under the Illinois Marriage and Dissolution of Marriage Act² or the Criminal Code of 1961,³ service of summons or execution of warrant and the time

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permitted for appearance or answer shall be governed by such Act or Code, as now or hereafter amended, and no additional service of process shall be required.

(c) Upon motion by the petitioner, the court may order service of process to be made by a private person over 18 years of age and not a party to the action. P.A. 82-621, § 203, eff. March 1, 1982.

¹ Paragraph 2302-2 of this chapter.

² Paragraph 101 et seq. of this chapter.

³ Chapter 38, § 1-1 et seq.

2302-4. Ex parte orders

§ 204. Ex parte orders. (a) Notwithstanding any other provision of law, an order of protection shall issue ex parte if the court finds that:

(1) The petitioner has diligently attempted to obtain service of process upon the respondent and has diligently attempted to serve written notice of the date, time and location of the hearing, together with a copy of the petition and all supporting affidavits upon the respondent in accordance with Illinois Supreme Court Rules 11 and 12; or

(2) For each specific remedy sought by the petitioner, the irreparable injury which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or earlier notice than was actually given, of the petitioner's efforts to obtain judicial relief.

(b) The duration, contents and remedies to be included in any ex parte order shall be governed by this Section and by Sections 208, 209 and 211 of this Act;¹ provided that ex parte orders shall not require the respondent to attend counseling, or to pay support, monetary compensation, fees or costs.

(c) Upon 2 days' notice to the petitioner who obtained an ex parte order or upon such shorter notice as the court may prescribe, a respondent who is subject to an ex parte order issued pursuant to this Section may appear and move for the dissolution or modification of the order and in that event the court shall proceed to hear and determine such motion as expeditiously as possible. Any such motion for dissolution or modification by the respondent shall be supported by affidavit. Nothing herein shall be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of any orders issued pursuant to this Act.

P.A. 82-621, § 204, eff. March 1, 1982.

¹ Paragraphs 2302-8, 2302-9 and 2302-11 of this chapter.

2302-5. Venue

§ 205. Venue. (a) Except as provided in subsection (b) of this Section, proceedings for an order of protection may be had in any county where the petitioner or respondent resides or in which the alleged abuse occurred.

(b) When an order of protection is requested in connection with a proceeding under the Illinois Marriage and Dissolution of Marriage Act¹ or the Criminal Code of 1961,² the venue provisions of that Act or Code, as now or hereafter amended, shall apply.

(c) Objection to venue is barred if not made within such time as respondent's response is due.

P.A. 82-621, § 205, eff. March 1, 1982.

¹ Paragraph 101 et seq. of this chapter.

² Chapter 38, § 1-1 et seq.

2302-6. Application of Civil Practice Law

§ 206. Application of Civil Practice Law. Any proceeding for an order of protection shall be in accordance with the Civil Practice Law, as now or hereafter amended,¹ except:

(1) As otherwise provided in this Act; and

(2) If the action for an order of protection is commenced in connection with a proceeding under the Illinois Marriage and Dissolution of Marriage Act, as otherwise provided in that Act, as now or hereafter amended.²

P.A. 82-621, § 206, eff. March 1, 1982. Amended by P.A. 82-783, Art. XI, § 85, eff. July 13, 1982.

¹ Chapter 110, § 2-101 et seq.

² Paragraph 101 et seq. of this chapter.

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The amendments by P.A. 82-783, Art. XI were necessary to revise references to laws which were superseded by the Code of Civil Procedure, see ch. 110, § 1-101 et seq.

For provisions of P.A. 82-783, Art. I, § 1 relating to intent and superseding and Art. XII, § 1 relating to effective dates and extension or revival of repealed Acts, see note following ch. 1, § 1023.

2302-7. Petitions of poor persons

§ 207. Petitions of poor persons. (a) Whenever a petitioner files an affidavit stating that he or she is seeking a temporary order of protection ex parte and lacks the funds to pay the costs of filing and service, the petition commencing the action for an order of protection shall be filed and service shall be made without payment of such costs or prior leave of court to proceed in forma pauperis. At the hearing on the petitioner's request for an ex parte relief, the court shall determine the petitioner's eligibility to proceed in forma pauperis.

(b) In all other petitions for an order of protection in which notice is given to the parties, the petitioner may file an application for leave to proceed in forma pauperis, supported by an affidavit in compliance with Illinois Supreme Court Rule 298.

(c) For purpose of determining whether a petitioner has the funds available to pay the costs of filing and service under this Act, the income of the family or household member alleged to be abusing the petitioner shall not be considered.

P.A. 82-621, § 207, eff. March 1, 1982.

2302-8. Order of protection—Remedies

§ 208. Order of protection: remedies. (a) Upon a finding of abuse, the court shall have the power to issue an order of protection granting any or all of the remedies outlined in this Section. These remedies shall be in addition to other civil or criminal remedies which may be available to the petitioner.

(b) Except as otherwise provided in this Act, the court's decision to deny any or all of these remedies shall not be based in whole or in part on evidence as to whether or not the petitioner has acted in defense of himself or herself, another family or household member or any minor child, or has left the residence or household to avoid further abuse by the respondent.

(c) The order of protection may include any or all of the following remedies:

(1) Ordering the respondent to refrain from striking, threatening, harassing or interfering with the personal liberty of the petitioner or any other family or household member;

(2) Granting possession of the residence or household to the petitioner, to the exclusion of the respondent, when (i) the parties are spouses; or (ii) the residence or household is solely or jointly owned or leased by the petitioner; or (iii) the respondent has a legal duty to support the petitioner or minor children. No order under this Act shall affect title to real property. Nothing in this paragraph shall preclude the court from ordering the respondent to provide suitable, alternate housing for the petitioner or minor children in lieu of excluding the respondent from the mutual residence or household;

(3) Upon motion by the petitioner and upon determination by the court that it has jurisdiction under Section 4 of the Illinois Uniform Child Custody Jurisdiction Act, as now or hereafter amended,¹ awarding temporary custody or establishing visitation rights with regard to minor children, in accordance with standards set forth in Part VI of the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended;²

(4) Prohibiting the respondent from removing a minor child from the jurisdiction or concealing a minor child from his or her parent or person in loco parentis, or ordering the respondent to appear in court with a minor child;

(5) Requiring or recommending the respondent to undergo counseling for a specified duration with a social worker, psychologist, clinical psychologist, psychiatrist, family service agency, mental health center guidance counselor, or any other guidance service the court deems appropriate;

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(6) Restraining the respondent from transferring, encumbering, concealing, damaging or otherwise disposing of petitioner's property or joint property of the petitioner and respondent; or from improperly using an aged family member's resources, financial or otherwise, for respondent's profit or advantage, or for the profit or advantage of another person;

(7) Requiring the respondent to pay temporary support for the petitioner or any child in the petitioner's custody, or both, when the respondent has a legal obligation to support that person, in accordance with standards set forth in Sections 504 and 505 of the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended;³

(8) Requiring the respondent to pay to the petitioner actual monetary compensation for losses suffered as a direct result of the abuse. Compensatory losses shall include, but not be limited to, medical expenses related to the abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, and moving expenses. The respondent shall have a right to a jury trial on the issue of whether to require any payments under this subsection (8). Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded;

(9) Requiring the respondent to pay court costs and reasonable attorney's fees, in connection with any action to obtain, modify, enforce, appeal or reopen any order of protection, in accordance with standards set forth in Section 508 of the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended;⁴

(10) Entering such injunctive relief as may be necessary or appropriate and referring to the aging network petitioners 60 years of age or older.

(d) In determining whether to grant a specific remedy in an order of protection, the court shall consider relevant factors, including but not limited to the following, and shall make findings thereon:

(1) the frequency, severity, pattern and consequences of the respondent's past abuse of the petitioner or any family or household members, including the concealment of his or her location in order to evade service of process or notice, and the likelihood of danger of future abuse to the petitioner or any family or household members;

(2) whether any minor child is in danger of abuse or neglect by the respondent, or whether the respondent has threatened or attempted to remove the child from the jurisdiction of the court; and

(3) where the court has denied a remedy under paragraph (2) of subsection (c) of this Section, the manner in which the hardship which would result from temporary exclusion of the respondent from his or her residence substantially outweighs the hardship which would result if the petitioner or any family or household members were deprived of safe and peaceful occupancy of the home by the threat of future abuse of the petitioner.

P.A. 82-621, § 208, eff. March 1, 1982. Amended by P.A. 82-888, § 1, eff. Aug. 5, 1982.

P.A. 82-888, in subd. (c)(6), inserted "or from improperly using an aged family member's resources, financial or otherwise, for respondent's

profit or advantage, or for the profit or advantage of another person"; and in subd. (c)(10), inserted "and referring to the aging network petitioners 60 years of age or older".

¹ Paragraph 2104 of this chapter.

² Paragraph 401 et seq. of this chapter.

³ Paragraphs 504 and 505 of this chapter.

⁴ Paragraph 508 of this chapter.

Cross References

Additional remedies, see ch. 38, § 111-8.

Ex parte orders, application of this paragraph, see § 2302-4 of this chapter.

Order of protection, remedies included, see § 2301-3 of this chapter.

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2302-9. Orders of protection—Contents

§ 209. Orders of protection: Contents. (a) All orders of protection shall describe, in reasonable detail and not by reference to any other document, what the court has ordered the respondent to do or refrain from doing, the duration of the order, and the reason for denial of the petitioner's request for any remedy described in subsection (c) of Section 208 of this Act.¹

(b) Any ex parte order of protection shall state the date and hour of issuance, the reason for entering the order ex parte and the date, time and place of the hearing for extension of the order.

(c) All orders of protection shall include a notice, printed in conspicuous type, advising the respondent that willful violation of any provision constitutes contempt of court and may further result in fine or imprisonment.

P.A. 82-621, § 209, eff. March 1, 1982.

¹ Paragraph 2302-8 of this chapter.

Cross References

Ex parte orders, application of this paragraph, see § 2302-4 of this chapter.

2302-10. Notice to parties and law enforcement agencies

§ 210. Notice to parties and law enforcement agencies. (a) Any order of protection shall be filed promptly in the office of the clerk of the court and entered of record. The clerk of the court shall promptly provide upon request a copy of any order of protection under this Act to the petitioner and to the respondent. A reasonable fee shall be charged for issuance of the required copies. However, this fee shall be waived for a petitioner proceeding in forma pauperis pursuant to Section 207 of this Act.¹

(b) The clerk of the court shall transmit to the sheriff having a law enforcement jurisdiction in that county a copy of any recorded order of protection, so that the sheriff may furnish the necessary data for the record maintained by the Department of Law Enforcement pursuant to Section 302 of this Act² and may serve the order upon the respondent, if necessary, under subsection (c) of this Section.

(c) Any order issued under this Act shall be personally served upon the respondent, in the manner provided for the service of process in civil proceedings and payment therefor shall be by petitioner unless waived pursuant to Section 207 of this Act or otherwise by law unless the respondent or his or her attorney were present in court at the time the order was rendered by the court.

(d) Copies of any subsequent amendment or revocation of the order shall be issued and served in the same manner as provided in this Section.

P.A. 82-621, § 210, eff. March 1, 1982.

¹ Paragraph 2302-7 of this chapter.

² Paragraph 2303-2 of this chapter.

2302-11. Duration of orders

§ 211. Duration of orders. (a) Except as otherwise provided in this Section, an order of protection shall be valid for a fixed period of time, not to exceed one year; provided that any order for a fixed period of time less than one year may be extended for a total duration of one year.

(b) Any ex parte order shall expire within 10 days after entry unless; (1) extended for good cause shown for a further period not to exceed 10 days; or (2) dissolved in accordance with subsection (c) of Section 204 of this Act.¹

(c) An order of protection entered as preliminary relief in a proceeding under the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended,² shall be valid until entry of judgment under Section 413 of that Act.

(d) When an order of protection has been incorporated in a final judgment under the Illinois Marriage and Dissolution of Marriage Act, as now or hereafter amended, the duration of any provisions of the order authorized by that Act shall be governed by that Act.

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(e) An order of protection entered in connection with a criminal proceeding shall be valid for the duration of the pre-trial release, probation, conditional discharge or supervision, as the case may be.

P.A. 82-621, § 211, eff. March 1, 1982.

¹ Paragraph 2302-4 of this chapter.

² Paragraph 101 et seq. of this chapter.

2302-12. Enforcement of orders

§ 212. Enforcement of orders. (a) Any violation of an order of protection concerning relief authorized under paragraphs (1) and (2) of subsection (c) of Section 208 of this Act¹ shall be a Class A misdemeanor, if the violation occurs after the respondent has been served notice of the order or otherwise has acquired actual knowledge thereof.

(b) Nothing in this Section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through civil or criminal contempt proceedings. In a contempt of court proceeding where the verified petition for a rule to show cause sets forth facts evidencing an immediate and present danger that the respondent will flee the jurisdiction or inflict physical violence on the petitioner or minor children, the court may order the attachment of the respondent without prior service of the rule to show cause.

P.A. 82-621, § 212, eff. March 1, 1982.

¹ Paragraph 2302-8 of this chapter.

Cross References

Arrest without warrant, see ¶ 2303-1 of this chapter.

2302-13. Trial by jury

§ 213. Trial by jury. Except as otherwise provided, there shall be no trial by jury in any proceeding to obtain or modify an order of protection under this Act; however, nothing in this Section shall deny any existing right to trial by jury in a proceeding to enforce a provision of an order of protection.

P.A. 82-621, § 213, eff. March 1, 1982.

ARTICLE III—LAW ENFORCEMENT RESPONSIBILITIES

Par.	Par.
2303-1. Arrest without warrant.	2303-3. Reports by law enforcement officers.
2303-2. Data maintenance by law enforcement agencies.	2303-4. Assistance by law enforcement officers.
	2303-5. Limited law enforcement liability.

2303-1. Arrest without warrant

§ 301. Arrest without warrant. (a) Any law enforcement officer may make an arrest without warrant if the officer has probable cause to believe that the person has committed or is committing a misdemeanor pursuant to subsection (a) of Section 212 of this Act.¹

(b) Any law enforcement officer may make an arrest without warrant if the officer has probable cause to believe that the person has committed or is committing a violation of Sections 9-1, 9-2, 9-3, 10-4, 10-5, 11-1, 11-3, 11-4, 11-5, 11-10, 11-11, 11-15, 11-15.1, 11-20a, 12-1, 12-2, 12-3, 12-4, 12-4.1, 12-5, 12-6 or 12-11 of the Criminal Code of 1961, as now or hereafter amended,² and the alleged offender and victim are family or household members, as defined in this Act, even if the violation did not occur in the presence of the officer.

(c) The law enforcement officer may verify the existence of an order of protection by telephone or radio communication with his or her law enforcement agency or by referring to the copy of the order provided by the petitioner or respondent.

P.A. 82-621, § 301, eff. March 1, 1982.

¹ Paragraph 2302-12 of this chapter.

² Chapter 38, §§ 9-1, 9-2, 9-3, 10-4, 10-5, 11-1, 11-3, 11-4, 11-5, 11-10, 11-11, 11-15, 11-15.1, 11-20a, 12-1 to 12-4.1, 12-5, 12-6 or 12-11.

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2303-2. Data maintenance by law enforcement agencies

§ 302. Data maintenance by law enforcement agencies. (a) All sheriffs shall furnish to the Department of Law Enforcement, daily, in the form and detail the Department requires, copies of any recorded orders of protection issued by the court and transmitted to the sheriff by the clerk of the court pursuant to subsection (b) of Section 210 of this Act.¹

(b) The Department of Law Enforcement shall maintain a complete and systematic record and index of all valid and recorded orders of protection issued pursuant to this Act. The data shall be used to inform all dispatchers and law enforcement officers at the scene of an alleged incident of abuse or violation of an order of protection of any recorded prior incident of abuse involving the abused party and the effective dates and terms of any recorded order of protection.

P.A. 82-621, § 302, eff. March 1, 1982.

¹ Paragraph 2302-10 of this chapter.

2303-3. Reports by law enforcement officers

§ 303. Reports by law enforcement officers. (a) Every law enforcement officer investigating an alleged incident of abuse between family or household members shall make a written police report of any bona fide allegation and the disposition of such investigation. Such police report shall include the abuse victim's statements as to the frequency and severity of prior incidents of abuse by the same family or household member and the number of prior calls for police assistance to prevent such further abuse.

(b) Every police report completed pursuant to this Section shall be recorded and compiled as a domestic crime within the meaning of Section 5.1 of "An Act in relation to criminal identification and investigation", approved July 2, 1931, as now or hereafter amended.¹

P.A. 82-621, § 303, eff. March 1, 1982.

¹ Chapter 38, § 206-5.1.

2303-4. Assistance by law enforcement officers

§ 304. Assistance by law enforcement officers. (a) Whenever a law enforcement officer has reason to believe that a person has been abused by a family or household member, the officer shall immediately use all reasonable means to prevent further abuse, including:

(1) Providing or arranging transportation for the victim of abuse to a medical facility for treatment of injuries or to a nearby place of shelter or safety;

(2) Accompanying the victim of abuse to his or her place of residence for a reasonable period of time to remove necessary personal belongings and possessions;

(3) Offering the victim of abuse immediate and adequate information of his or her rights, written in English and Spanish, which shall include a summary of the procedures and relief available to victims of abuse under this Act, one referral to a social service agency, and the officer's name and badge number; and

(4) Arresting the abusing party where appropriate.

(b) Whenever a law enforcement officer does not exercise arrest powers or otherwise initiate criminal proceedings, the officer shall:

(1) Make a police report of the investigation of any bona fide allegation of an incident of abuse and the disposition of such investigation, in accordance with subsection (a) of Section 303 herein;¹

(2) Inform the victim of abuse of the victim's right to request that a criminal proceeding be initiated, including specific times and places for meeting with the State's Attorney's office, a warrant officer or other official in accordance with local procedure; and

(3) Advise the victim of the importance of preserving evidence.

P.A. 82-621, § 304, eff. March 1, 1982.

¹ Paragraph 2303-3 of this chapter.

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2303-5. Limited law enforcement liability

§ 305. Limited law enforcement liability. Any act of omission or commission by any law enforcement officer acting in good faith in rendering emergency assistance or otherwise enforcing this Act shall not impose civil liability upon the law enforcement officer or his or her supervisor or employer, unless the act is a result of willful or wanton misconduct.
P.A. 82-621, § 305, eff. March 1, 1982.

ARTICLE IV—AMENDATORY PROVISIONS

Article IV made certain conforming amendments to other Acts.

ARTICLE V

Par.
2305-1. Effective date.

2305-1. Effective date

§ 501. This Act shall become effective on March 1, 1982.
P.A. 82-621, § 501, eff. March 1, 1982.

DOMESTIC VIOLENCE SHELTERS

Par.	Definitions.	Par.	Domestic Violence Shelter and Service Fund.
2401.		2403.	
2402.	Service programs—Administration.	2403.1.	Deposit of fees [New].

2401. Definitions

§ 1. The terms used in this Act shall have the following meanings ascribed to them:

(a) "Domestic violence" means attempting to cause or causing bodily injury to a family or household member, or placing a family or household member, by threat of force, in fear of imminent physical harm.

(b) "Family or household member" means a spouse, person living as a spouse, parent, or other adult person related by consanguinity or affinity, who is residing or has resided with the person committing domestic violence.

(c) "Shelter" means a facility providing, but not limited to temporary residential facilities to family or household members who are victims of domestic violence and their children.

P.A. 82-645, § 1, eff. Jan. 1, 1982.

Title of Act: An Act in relation to domestic relations and domestic violence shelters and service programs. P.A. 82-645, approved Sept. 24, 1981, eff. Jan. 1, 1982.

2402. Service programs—Administration

§ 2. The Department of Public Aid shall administer domestic violence shelters and service programs, or shall provide for their administration by not-for-profit corporations with whom the Department has contracts, for adults and their dependents who are the subjects of domestic violence.

P.A. 82-645, § 2, eff. Jan. 1, 1982.

Library References
Asylums and Institutional Care Facilities

C.J.S. Asylums and Institutional Care Facilities §§ 2 to 4.

2403. Domestic Violence Shelter and Service Fund

§ 3. The Department of Public Aid shall provide for the funding of domestic violence shelters and service programs from the Domestic Violence Shelter and Service Fund. In allotting monies from such fund, the Department shall give priority

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to shelters or programs offering or proposing to offer the broadest range of services and referrals to the community served. Such shelters or programs may be operated by community-based organizations or units of local government. The Department shall require shelters or programs eligible for funding under this Act to provide matching funds in such percentage as the Department shall by rule determine and such percentage shall be uniform throughout the State.
P.A. 82-645, § 3, eff. Jan. 1, 1982.

Cross References

Deposits in fund, see ch. 35, § 1.2f.

Notes of Decisions

1. In general

The county clerk, upon receipt of a \$25 marriage license fee, and a circuit court clerk, upon

receipt of a \$45 filing fee in dissolution of marriage cases, should deposit the entire fee with the county treasurer who, in turn, must then pay \$10 of each marriage license fee and \$5 of each marriage dissolution fee into the Domestic Violence Shelter and Service fund in the State treasury. 1981 Op.Atty.Gen. No. 81-043.

2403.1. Deposit of fees

§ 3.1. Each circuit and county clerk shall deposit with the county treasurer, in accordance with Section 2 of "An Act to provide for the timely deposit of fees collected pursuant to law by any elected or appointed official of local government", approved September 1, 1972,¹ all fees or portions of fees collected pursuant to law, which are designated for payment into the Domestic Violence Shelter and Service Fund. The county treasurer shall, monthly, by the 10th day of the month following receipt, remit the amounts so deposited to the State Treasurer, who shall deposit such amounts into the Domestic Violence Shelter and Service Fund in the State treasury.
P.A. 82-645, § 3.1, added by P.A. 82-888, § 2, eff. Aug. 5, 1982.

¹ Chapter 85, § 722.

Notes of Decisions

1. Construction and application

The county clerk, upon receipt of a \$25 marriage license fee, should deposit the entire fee

with the county treasurer who, in turn, must then pay \$10 of each marriage license fee into the Domestic Violence Shelter and Service Fund (§ 2403 of this chapter) in the State treasury. 1981 Op.Atty.Gen. No. 81-043.

ch 110 Chapter 110

EVIDENCE—RAPE-CRISIS-COUNSELOR—CONFIDENTIALITY OF STATEMENTS

PUBLIC ACT 83-678

SENATE BILL 204

AN ACT to amend Section 8-802.1 of the "Code of Civil Procedure", approved August 19, 1981, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 8-802.1 of the "Code of Civil Procedure", approved August 19, 1981, as amended, is amended to read as follows:

(Ch. 110, par. 8-802.1) [S.H.A. ch. 110, § 8-802.1]
Sec. 8-802.1. Confidentiality of Statements Made to Rape Crisis Personnel. (a) Purpose. This Section is intended to

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protect victims of rape, deviate sexual assault, indecent liberties with a child, and incest from public disclosure of statements they make in confidence to counselors of organizations established to help them. Because of the fear and stigma that often results from those crimes, many victims hesitate to seek help even where it is available at no cost to them. As a result they not only fail to receive needed medical care and emergency counseling, but may lack the psychological support necessary to report the crime and aid police in preventing future crimes.

(b) Definitions. Definition. As used in this Act: (1) "Rape crisis organization" means any organization or association the major purpose of which is providing information, counseling, and psychological support to victims of any or all of the crimes of rape, deviate sexual assault, incest, and aggravated incest.

(2) "Rape crisis counselor" means a person who is employed in any organization or association defined as a rape crisis organization under this Section, who is a psychologist, social worker or a volunteer who has undergone 40 hours of training and is under the control of a direct services supervisor of a rape crisis organization.

(3) "Confidential communication" means any communication between an alleged victim of rape, deviate sexual assault, incest, aggravated incest, indecent liberties with a child or an attempt to commit any such offense and a rape crisis counselor in the course of providing information, counseling and advocacy. The term includes all records kept by the counselor or by the organization in the course of providing services to an alleged victim concerning the alleged victim and the services provided.

(c) Confidentiality. No rape crisis counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal proceeding as to any confidential communication without the consent of the victim.

(d) Any rape crisis counselor who knowingly discloses any confidential communication in violation of this Act commits a Class C misdemeanor.

(e) Confidentiality. Where any victim or alleged victim of rape, deviate sexual assault, incest or aggravated incest makes a statement relating to the crime or its circumstances during the course of therapy or consultation to any counselor, employee or volunteer of a rape crisis organization, the statement or contents thereof shall not be disclosed by the organization or any of its personnel unless the maker of the statement consents in writing or unless otherwise pursuant to this Section.

If in any judicial proceeding a party alleges that such statements are necessary to the determination of any issue before the court and written consent has not been given, the party may ask the court to consider the relevance and admissibility of the statements. In such a case, the court shall hold a hearing in camera on the relevance of the statements. If it finds them relevant and admissible to the issue, it shall order them disclosed.

Category		Citation
1.	Victim Compensation Program	16-7-3.6-1 et seq.
1.1	Responsible Agency	16-7-3.6-2
1.2	Eligible Claimants	16-7-3.6-5
1.3	Losses Covered	16-7-3.6-8(a),(b)
1.4	Minimum and Maximum Award	16-7-3.6-8(a), 16-7-3.6-12
1.5	Required to Show Financial Need	
1.6	Required to Report Crime - Time Limit	16-7-3.6-7
1.7	Filing of Claim - Time Limit	16-7-3.6-6(b)
1.8	Emergency Award	16-7-3.6-13
1.9	Funding	16-7-3.6-17
2.	Restitution	
2.1	Sentencing Option	35-38-2-2(5); 35-50-5-3
2.2	Mandatory Condition of Probation	
2.3	Mandatory Condition of Parole	
2.4	Mandatory Sentence	
2.5	Administration/Enforcement	
3.	Escrow and Forfeiture of Offender Profits	16-7-3.7-1 et seq.
4.	Witness Fees	33-1-14-1
5.	Victim's Bill of Rights	
6.	Protection from Intimidation	
6.1	Crime Defined	35-44-3-4; 35-33-8-5(d) (grounds for revocation of bail)
6.2	Protective Orders	
7.	Victim Notification	
7.1	of Compensation Program	
7.2	of Witness Fees	
7.3	of Final Disposition	
7.4	of Plea Agreement	35-35-3-2(a)(1),(2); 35-35-3-5
7.5	of Cancelled Proceeding	
7.6	of Right to Participate in Sentencing Hearing	
7.7	of Parole Hearing	
7.8	of Release of Offender	11-13-3-3(c),(d),(e),(g) (on parole)
7.9	of Escape of Offender	
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	35-38-1-9
8.2	Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	35-35-3-2(3); 35-35-3-5 et seq.
8.7 Participation in Other Proceedings	
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Chapter 3.6. Compensation for Victims of Violent Crimes.

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16-7-3.6-1. Definitions.

Sec. 1. As used in this chapter:

(a) "Division" means the violent crime compensation division established as a division of the industrial board of Indiana.

(b) "Violent crime" means a crime under the Indiana Code that is a felony of any kind or a Class A misdemeanor and that results in bodily injury or death to the victim but does not include:

- (1) a conviction under IC 9-11-2;
- (2) involuntary manslaughter resulting from the operation of a motor vehicle (IC 35-42-1-4);
- (3) reckless homicide resulting from the operation of a motor vehicle (IC 35-42-1-5); or
- (4) criminal recklessness involving the use of a motor vehicle, unless the offense was intentional (IC 35-42-2-2).

(c) "Claimant" means a victim filing an application for assistance under this chapter. The term includes the parent, surviving spouse, legal dependent, or personal representative of such person.

(d) "Person" includes a sole proprietorship, partnership, corporation, association, fiduciary, or individual.

(e) "Victim" means an individual who suffers bodily injury or death as a result of a violent crime. As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1979, P.L.150, SEC.1; Acts 1980, P.L.117, SEC.2; P.L.143-1983, SEC.7.

16-7-3.6-2. Compensation division; establishment

Sec. 2. The violent crime compensation division is established as a division of the industrial board of Indiana. As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1980, P.L.117, SEC.3.

16-7-3.6-3. Regulations; director

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Sec. 3. The division shall promulgate regulations under IC 4-22-2 to implement this chapter. The chairman of the industrial board of Indiana shall also act as director of the violent crimes compensation division. *As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1980, P.L.117, SEC.4.*

16-7-3.6-4 Powers and duties of division

Sec. 4. The division:

- (1) shall maintain an office and staff in Indianapolis;
- (2) shall prescribe forms for processing applications for assistance;
- (3) may require from the attorney general, state police, local law enforcement personnel, county department of public welfare, or a prosecuting attorney copies of investigations and data to assist the division to determine the validity of a claimant's application for assistance under this chapter;
- (4) shall determine all claims for assistance filed under this chapter, and investigate or reopen cases as the division deems necessary;
- (5) may require medical examination of victims;
- (6) may hold hearings, administer oaths, examine any person under oath, issue subpoenas requiring the attendance and giving of testimony of witnesses, and require the production of books, papers, and documentary or other evidence (the subpoena powers provided in this subdivision may be exercised only by the division director or his designated representative);
- (7) may take or cause to be taken affidavits or depositions; and
- (8) shall prepare each year for the governor and the legislative council a written report of its activities.

As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1982, P.L.21, SEC.42.

16-7-3.6-5 Persons eligible for assistance; restrictions; funeral expenses

Sec. 5. (a) Except as provided in subsections (b) and (c), the following persons shall be eligible for assistance under this chapter:

- (1) A victim of a violent crime.
- (2) A surviving spouse or dependent child of a victim of a violent crime who died as a result of that crime.
- (3) any other person legally dependent for principal support upon a victim of a violent crime who died as a result of that crime.
- (4) a person who is injured or killed while trying to prevent a violent crime or an attempted violent crime from occurring in his presence or trying to apprehend a person who had committed a violent crime.
- (5) a surviving spouse or dependent child of a person who dies as a result of trying to prevent a violent crime or an attempted violent crime from occurring in his presence or trying to apprehend a person who had committed a violent crime.
- (6) a person legally dependent for principal support upon any person who dies as a result of trying to prevent a violent crime or an attempted violent crime from occurring in his presence or trying to apprehend a person who had committed a violent crime.
- (7) a person who is injured or killed while giving aid and assistance to:
 - (i) a law enforcement officer in the performance of his lawful duties; or
 - (ii) a member of a fire department who is being obstructed from performing his lawful duties.

(b) A person who commits a violent crime upon which an application is based, or an accomplice of that person or a member of the family of that person, is not eligible for assistance under this chapter. However, if the victim is a legal nonspousal dependent of the person who commits a violent crime, compensation may be awarded where justice requires.

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(c) If any unmarried victim of a violent crime dies as a result of that crime, the division shall pay the reasonable expenses incurred for funeral, burial, or cremation.

As added by Acts 1977, P.L.358, SEC.1. Amended by P.L.191-1983, SEC.1.

16-7-3.6-6 Application for assistance; filing; requisites

Sec. 6. (a) Any person eligible for assistance under section 5(a) of this chapter may file an application for assistance with the division if the violent crime was committed in Indiana.

(b) The application must be filed within one hundred eighty days (180) of the date the crime was committed. The division may grant an extension of time for good cause shown by the claimant. However, an application may not be filed after two (2) years of the date the crime was committed.

(c) The application shall be filed in the state or regional office of the division in person or by certified mail. If requested, the division shall assist a victim in the preparation of his application.

(d) The division shall accept all applications filed in compliance with this chapter. The division shall promptly begin its investigation and processing of an application. *As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1982, P.L.21, SEC.43; P.L.191-1983, SEC.2.*

16-7-3.6-7 Report to police; cooperation of victim; requirements; suspension

Sec. 7. The division may not award compensation under this chapter unless the violent crime was reported to a law enforcement officer within forty-eight (48) hours after its occurrence and the claimant has cooperated fully with law enforcement personnel to solve that crime. If the division finds a compelling reason for failure to report to or cooperate with law enforcement officials, and justice requires, it may suspend the requirements of this section. *As added by Acts 1977, P.L.358, SEC.1.*

16-7-3.6-8 Award of compensation; minimum loss; subrogation; lien; recovery proceedings; costs and fees

Sec. 8. (a) An award may not be made unless the claimant has incurred an out-of-pocket loss of at least one hundred dollars (\$100). "Out-of-pocket loss" means expense or indebtedness reasonably incurred for medical care or other services resulting from the bodily injury or death upon which the application is based.

(b) Subject to subsection (a) the division may order the payment of compensation under this chapter for:

- (1) reasonable expenses incurred for necessary medical, chiropractic, hospital, dental, psychological, optometric, psychiatric, and ambulance services, as well as prescription drugs and prosthetic devices;
- (2) loss of income the victim would have earned had the victim not died or been injured;
- (3) reasonable expense incurred for childcare, not to exceed one thousand dollars (\$1,000) to replace childcare the victim would have supplied had the victim not died or been injured;
- (4) loss of financial support that the victim would have supplied to legal dependents had the victim not died or been injured;
- (5) reasonable expenses incurred for funeral, burial, or cremation; and
- (6) other actual expenses resulting from the bodily injury or death of the victim which the division determines reasonable.

(c) The state of Indiana is subrogated to the rights of the victim to whom an award is granted to the extent of the award. The subrogation rights shall be against the perpetrator of the crime or any person liable for the pecuniary loss.

(d) The state is also entitled to a lien in the amount of the award on any recovery made by or on behalf of the victim. The state may recover this amount in a separate action, or

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may intervene in an action brought by or on behalf of the victim. If the claimant brings the action he may deduct from the monies owed to the state under the lien the state's pro rata share of the reasonable expenses for the court suit, including attorney's fees. As added by Acts 1977, P.L.358, SEC.1. Amended by P.L.191-1983, SEC.3.

16-7-3.6-9 Hearing officers

Sec. 9. For the purpose of carrying out the provisions of this chapter, the division shall employ hearing officers to review each application for an award. Hearing officers must have at least three (3) semesters of legal training at an accredited law school or have equivalent training and experience under standards prescribed by the director of the division. As added by Acts 1977, P.L.358, SEC.1.

16-7-3.6-10 Review of applications; investigation; hearing; determination; appeal

Sec. 10. (a) The division shall review all applications to insure they are complete. If the application is not complete, it shall be returned to the applicant with a brief statement of the additional information required. The applicant, within thirty (30) days of receipt of the request for additional information, may either supply that information or appeal to the director of the division. The decision of the director of the division shall be final. If the applicant does not furnish additional information, or additional time is not granted by the director for good cause, or the applicant does not appeal the request within the thirty (30) days, the application shall be denied.

(b) If an application is complete, the division shall accept it for filing and investigate the facts stated in the application. As part of the investigation, the division shall verify that:

- (1) a violent crime was committed;
- (2) the victim was bodily injured or killed as a result of that crime;
- (3) the requirements of sections 5(b), 6(a), 6(b), and 7 of this chapter are met; and
- (4) out-of-pocket loss exceeded one hundred dollars (\$100).

(c) A hearing officer may hold a hearing concerning the merits of the application to allow any interested person to appear to offer evidence and argument on any issue relevant to the application or to the facts surrounding the bodily injury or death upon which the application is based. If a hearing is held the claimant shall be notified in writing by certified mail with return receipt requested fifteen (15) days in advance as to the date, time, place and scope of the hearing in accordance with IC 4-22-1-6. All hearings shall be open to the public unless the hearing officer, in consultation with the director, determines that the hearing, or a portion thereof, should be held in private in the interest of the victim or society where justice requires.

(d) Within ten (10) days after the hearing, the hearing officer shall issue a written determination supported by findings of fact and conclusions of law based on the record from the hearing, investigation and the application of the claimant. Copies of the determination shall be mailed to the claimant at the address given in the application and to the attorney general.

(e) The state or a claimant may appeal the findings of the hearing officer within twenty-one (21) days after the date of receipt of the findings by filing a written appeal with the director. If an appeal is filed, the director shall review the matter and place it on the docket for review by the full industrial board.

(f) All proceedings under this section shall be according to the procedures of the industrial board of Indiana.

(g) The hearing officer may not deny an award without providing the claimant with an opportunity for a hearing. As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1979, P.L.150, SEC.2; Acts 1980, P.L.117, SEC.5.

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16-7-3.6-11 Certain other benefits; reduction of award; refund; denial of award for contributing to injury or death

Sec. 11. (a) The division shall reduce an award made under this chapter by the amount of benefits received or to be received from the following sources, if those benefits result from or are in any manner attributable to the bodily injury or death upon which the award is based:

- (1) Restitution from the offender.
- (2) Benefits from a third party on behalf of the offender.
- (3) Benefits from public or private pension programs.
- (4) Benefits from proceeds of insurance policies.
- (5) Workmen's compensation benefits.
- (6) Unemployment compensation benefits.

A deduction may not be made on any other basis.

(b) When an award is made under this chapter and the claimant also receives a sum required to be deducted under subsection (a) of this section, the claimant shall refund to the state that amount of overpayment.

(c) In determining the amount of award, the division shall determine whether the victim contributed to the infliction of his injury or death. If the division finds that the victim did contribute to the infliction of his injury or death the division shall deny an award, unless the division also finds that the victim's conduct was attributable to an effort to:

- (1) prevent a crime from occurring in his presence; or
- (2) apprehend a person who committed a crime in his presence.

As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1979, P.L.150, SEC.3; Acts 1982, P.L.21, SEC.44.

16-7-3.6-12 Amount of award; limitations

Sec. 12. (a) An award under this chapter to a claimant may not exceed ten thousand dollars (\$10,000) and may not cover the first one hundred dollars (\$100) of the claim.

(b) The part of an award covering an unpaid bill shall be made payable jointly to the claimant and to the creditor on that bill. As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1979, P.L.150, SEC.4.

16-7-3.6-13 Emergency award; amount

Sec. 13. If the division determines that a claimant will suffer severe financial hardship unless an emergency award is made, and it appears likely that a final award will be made, an emergency award not to exceed five hundred dollars (\$500) may be authorized by the division director or his designated representative. The amount of an emergency award shall be deducted from the final award made by the division. The amount of an emergency award shall be recoverable from the claimant if no award is made by the division or to the extent that the emergency award exceeds the amount of the final award. As added by Acts 1977, P.L.358, SEC.1.

16-7-3.6-14 Attorney's fees

Sec. 14. As part of the award the division shall determine any attorney fees commensurate with services rendered to the claimant. Attorney's fees shall be included in the award but may not exceed fifteen percent (15%) of the total amount of an award of less than five thousand dollars (\$5,000), nor ten percent (10%) of the total amount of an award of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000). An attorney who knowingly contracts for or receives a fee larger than the amount determined by the board commits a Class A misdemeanor, and shall in addition forfeit his fee for representing the claimant. As added by Acts 1977, P.L.358, SEC.1.

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16-7-3.6-15 Exemption from process

Sec. 15. An award made by the division to a claimant is not subject to execution, attachment, garnishment, or other process, except the claim of a creditor to the extent that those costs were included in the award. *As added by Acts 1977, P.L.358, SEC.1.*

16-7-3.6-16 Emergency hospital services without charge; payment of costs

Sec. 16. When any hospital provides emergency services required under IC 16-10-1.5 to any rape victim, or alleged rape victim, the hospital shall furnish such services to that person without charge and shall be entitled to be reimbursed for its costs in providing the services by the state board of health as provided by IC 16-10-1.5-7. Costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sex crime (under IC 35-42-4) not covered under the provisions of IC 16-10-1.5 or incest (under IC 35-46-1-3), when the examination is performed for the purposes of gathering evidence for possible prosecution, may not be charged to the victim of the crime. The costs shall be treated as local costs and charged to the appropriate local governmental agency as follows:

- (1) If the treatment or services are provided at a county or city hospital, or hospital district facility, the county shall pay the expenses.
- (2) If the treatment or services are provided at a private hospital, the expenses shall be paid by the county in whose jurisdiction the alleged crime was committed.

As added by Acts 1977, P.L.358, SEC.1.

16-7-3.6-17 Compensation fund; establishment; time for computation and payment

Sec. 17. (a) A dedicated fund called "Violent Crime Victims Compensation Fund" is established to provide monies for the awards provided under this chapter. Monies in the fund and any income derived from them do not revert to the state general fund at the end of any fiscal year.

(b) A criminal court cost of fifteen dollars (\$15) for all Class A misdemeanors and all felonies as provided in IC 33-6-1-17 and IC 33-14-7-20 shall be deposited in this fund.

(c) If the division determines that an award from the violent crime victims compensation fund becomes final during any month, the division shall compute the award before the fifteenth day of the following month. Except as provided in subsection (d), all awards shall be paid within thirty (30) days of the date on which they are computed. Awards shall be paid in the order in which they became final.

(d) If the fund would be reduced below two hundred fifty thousand dollars (\$250,000) by payment in full of all awards that become final in any month, the division shall proceed as follows:

- (1) The division shall suspend payment of the claims that become final during that month and the following two (2) months.
- (2) At the end of the suspension period, the division shall pay all suspended claims. If the fund would be exhausted by payment in full of all suspended claims, the amount paid to each claimant shall be prorated.

(e) The state is not liable for a written determination made by the division under this chapter, except to the extent that monies are available in the violent crime victims compensation fund on the date the award is computed by the division under this section.

(f) The industrial board of Indiana shall, in the manner prescribed by IC 4-22-2, establish rules governing the computation and payment of awards under this section. *As added by Acts 1977, P.L.358, SEC.1. Amended by Acts 1979, P.L.150, SEC.5; Acts 1980, P.L.117, SEC.6; Acts 1982, P.L.21, SEC.45.*

16-7-3.6-18 Fraud; forfeiture

Sec. 18. A claimant convicted of forgery, fraud or deception in connection with a claim under this chapter shall forfeit any award paid to him under this chapter. *As added by Acts 1977, P.L.358, SEC.1.*

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16-7-3.6-19 Review of division; recommendation; abolition

Sec. 19. During the year 1981 a committee of the general assembly shall review the need to continue the violent crime compensation division and shall submit its recommendation to the general assembly before December 31, 1981. Subject to further action by the general assembly, the division established by this chapter is abolished and all powers, duties, and functions adhering to the division are terminated effective December 31, 1982. *As added by Acts 1977, P.L.358, SEC.1.*

16-7-3.6-19.1 Division; continuation

Sec. 19.1. Notwithstanding section 19 of this chapter, the division established by this chapter is not abolished and the powers, duties, and functions adhering to it are not terminated on December 31, 1982. *As added by Acts 1982, P.L.21, SEC.46.*

16-7-3.6-20 Administration expenses; payment; limitation

Sec. 20. The industrial board of Indiana may pay expenses incurred in administering this chapter only from money appropriated for that purpose from the violent crime victims

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35-38-2-2 Conditions of probation; statement of conditions; term of imprisonment; intermittent service; transfers and retransfers of supervision

Sec. 2. (a) As conditions of probation, the court may require the person to do any combination of the following:

- (5) Make restitution or reparation to the victim of his crime for the damage or injury that was sustained. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.

* * *

35-50-5-3 Restitution to victim; order

Sec. 3. (a) In addition to any sentence imposed under this article for a felony or misdemeanor, the court may, without placing the person on probation, order the person to make restitution to the victim of his crime. The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime; and
- (3) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime.

(b) An order of restitution under subsection (a) does not bar a civil action for other damages suffered by the victim. *As added by P.L.337-1983, SEC.1.*

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Chapter 3.7. Broadcast or Publication of Crime Stories.

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| 16-7-3.7-1 Definitions | 16-7-3.7-5 Distribution of escrowed money to violent crime victims compensation fund |
| 16-7-3.7-2 Contracts for broadcast or publication; escrow of money | 16-7-3.7-6 Distribution of escrowed money to responsible party |
| 16-7-3.7-3 Distribution of escrowed money to indigent responsible parties; petition; order | |
| 16-7-3.7-4 Distribution of escrowed money to persons receiving damage awards | |

16-7-3.7-1 Definitions

Sec. 1. As used in this chapter:

"Division" means the violent crime compensation division established as a division of the Indiana industrial board.

"Responsible party" means an individual who has been formally charged with or convicted of a felony. *As added by Acts 1982, P.L.21, SEC.48.*

16-7-3.7-2 Contracts for broadcast or publication; escrow of money

Sec. 2. A person who after August 31, 1982, contracts with a responsible party, with respect to the publication or broadcast of the responsible party's thoughts, feelings, opinions, or emotions regarding a felony of which the responsible party has been accused or convicted, shall submit a copy of the contract to the division, and shall pay to the division ninety percent (90%) of the money that would otherwise, by terms of the contract, be owed to the responsible party. The division shall deposit this money in a separate interest-bearing escrow account, and shall only make distributions from that account in accordance with this chapter. *As added by Acts 1982, P.L.21, SEC.48.*

16-7-3.7-3 Distribution of escrowed money to indigent responsible parties; petition; order

Sec. 3. (a) The responsible party may petition the court before which he is to be tried or in which he has been convicted for an order requiring the division to distribute money from the escrow account to the responsible party in any amount up to the total in the escrow account at the time the petition is filed. The court shall make such an order only upon a showing that:

- (1) without use of the money held in the escrow account, the responsible party would be indigent; and
- (2) the money will be used for the exclusive purpose of retaining legal counsel or for investigation during any state of the felony proceedings against the responsible party, including the appeals process.

(b) Upon receipt of a court order issued under this section, the division shall distribute the required amount from the money in the escrow account. *As added by Acts 1982, P.L.21, SEC.48.*

16-7-3.7-4 Distribution of escrowed money to persons receiving damage awards

Sec. 4. If the victim or his heirs receive a damage award as a result of a civil action arising from the felonious act that has been charged, the person awarded the damages may petition the court for an order requiring the division to distribute money to that person from the escrow account. However, the court may make such an order only for an amount equal to the amount by which the damage award exceeds the value of the defendant's

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assets that are in the defendant's possession and that can be taken by the plaintiff in order to satisfy the damage award. *As added by Acts 1982, P.L.21, SEC.48.*

16-7-3.7-5 Distribution of escrowed money to violent crime victims compensation fund

Sec. 5. If the responsible party has been found to be guilty, guilty but mentally ill, or not responsible by reason of insanity, for the act of which he has been accused, and if he has exhausted all appeals or if the time for appeals has expired, then the division may pay all money remaining in the escrow account into the violent crime victims compensation fund (IC 16-7-3.6-17). However, the division may not make this payment unless at least two (2) years have elapsed from the time the responsible party committed the act for which he has been charged. In addition, the division may not make the payment while any civil action arising from the felony is pending. *As added by Acts 1982, P.L.21, SEC.48.*

16-7-3.7-6 Distribution of escrowed money to responsible party

Sec. 6. (a) Except as provided in subsection (b) of this section, if a responsible party is found to be not guilty or has had the case against him dismissed, and if all periods for appeal by the state have expired, then the division shall distribute all money remaining in the escrow account to that responsible party.

(b) If a responsible party is found to lack the competency necessary to stand trial, the division shall distribute all money remaining in the escrow account to that responsible party if:

- (1) he does not become competent to stand trial within five (5) years after the money is first placed in the escrow account; and
- (2) no civil actions arising from the felony of which he is accused are pending.

As added by Acts 1982, P.L.21, SEC.48.

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33-1-14-1 Circuit and superior courts

Sec. 1. Witness fees in the circuit and superior courts are as follows:

- (1) For each witness attending the circuit and superior courts, five dollars (\$5) per day.
- (2) For each mile necessarily traveled from his residence in going to and returning from court, a sum equal to that sum per mile paid to state officers and employees.

As added by Acts 1980, P.L.8, SEC.158.

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35-44-3-4 Obstruction of justice; exception

Sec. 4. (a) A person who:

- (1) knowingly or intentionally induces, by threat, coercion, or false statement, a witness or informant in an official proceeding or investigation to:
 - (A) withhold or unreasonably delay in producing any testimony, information, document, or thing;
 - (B) avoid legal process summoning him to testify or supply evidence; or
 - (C) absent himself from a proceeding or investigation to which he has been legally summoned;
- (2) knowingly or intentionally in an official criminal proceeding or investigation:
 - (A) withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders him to produce the testimony, information, document, or thing;
 - (B) avoids legal process summoning him to testify or supply evidence; or
 - (C) absents himself from a proceeding or investigation to which he has been legally summoned;
- (3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;
- (4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; or
- (5) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror;

commits obstruction of justice, a Class D felony.

(b) Subdivision (a)(2)(A) does not apply to:

- (1) a person who qualifies for a special privilege under IC 34-3-5-1 with respect to the testimony, information, document, or thing; or
- (2) a person who, as an:
 - (A) attorney;
 - (B) physician;
 - (C) member of the clergy; or
 - (D) husband or wife;

is, under IC 34-1-14-5, not competent as a witness.

As amended by Acts 1981, P.L.301, SEC.2; Acts 1982, P.L.195, SEC.3.

35-33-8-5 Alteration or revocation of bail

(d) The court may revoke bail upon clear and convincing proof by the state that, while admitted to bail, the defendant:

- (1) or his agent threatened or intimidated prospective witnesses or jurors concerning the pending criminal proceeding;

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Chapter 3. Plea Agreements.

Sec.

35-35-3-1 Definitions

35-35-3-2 Felony charge; duties of prosecuting attorney

35-35-3-3 Conditions; presentence report; acceptance or rejection

35-35-3-4 Inadmissibility at trial

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35-35-3-5 Presentation to and opinion by victim; certification

35-35-3-6 Procedure required by 35-35-3-5; representatives of deceased or legal entity victims; multiple victims

35-35-3-7 Inability to locate victim or next of kin; certification

35-35-3-1 Definitions

Sec. 1. As used in this chapter:

"Plea agreement" means an agreement between a prosecuting attorney and a defendant concerning the disposition of a felony or misdemeanor charge.

"Presumptive sentence" means the penalty prescribed by IC 35-50-2 without consideration of mitigating or aggravating circumstances.

"Prosecuting attorney" includes a deputy prosecuting attorney.

"Recommendation" means a proposal that is part of a plea agreement made to a court that:

- (1) a felony charge be dismissed; or
- (2) a defendant, if he pleads guilty to a felony charge, receive less than the presumptive sentence.

"Victim" means a person who has suffered harm as a result of a crime. As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.27; P.L.320-1983, SEC.18.

1981 Enactment. Acts 1981, P.L. 298, Sec. 4. This section was derived from former section eff. Sept. 1, 1982, added this chapter. 35-5-6-1.

35-35-3-2. Felony charge; duties of prosecuting attorney

Sec. 2. (a) In making a recommendation on a felony charge, a prosecuting attorney must:

- (1) inform the victim that he has entered into discussions with defense counsel or the court concerning a recommendation;
- (2) inform the victim of the contents of the recommendation before it is filed; and
- (3) notify the victim so that he might be present when the court considers the recommendation.

(b) A court may consider a recommendation on a felony charge only if the prosecuting attorney has complied with this section. As added by Acts 1981, P.L.298, SEC.4.

1981 Enactment. This section was derived from former section 35-5-6-1.5. Library References Criminal Law §273.1(2). C.J.S. Criminal Law § 423(5).

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35-35-3-5 Presentation to and opinion by victim; certification

Sec. 5. As a part of the recommendation submitted to the court, the prosecuting attorney must certify that he has offered to show the proposed recommendation to the victims of the felony, if any, and that they have been offered an opportunity to present their opinion of the recommendation to the prosecuting attorney. However, this gives no additional rights to the defendant. Failure to comply gives no grounds for postconviction relief. *As added by Acts 1981, P.L.298, SEC.4.*

1981 Enactment. This section was derived from former section 35-5-6-4.

Library References

Criminal Law §273.1(4).

C.J.S. Criminal Law § 423(2) et seq.

Cross References

Presentence investigations, statements submitted to prosecutor by victims, see section 35-38-1-9.

35-35-3-6 Procedure required by 35-35-3-5; representatives of deceased or legal entity victims; multiple victims

Sec. 6. (a) If the victim is deceased or is under the age of eighteen (18) years, the prosecuting attorney shall certify that he has completed the procedure required by section 5 of this chapter with at least one (1) of the next of kin or the parent, guardian, or custodian of the victim. If the victim is a corporation, association, or governmental entity, the prosecuting attorney shall certify that he has completed the procedure with a responsible officer or agent of the entity. If the victim is a partnership, the prosecuting attorney shall certify that he has completed the procedure with at least one (1) partner.

(b) If there are more than three (3) victims, the prosecuting attorney shall complete the procedure required by section 5 of this chapter with the three (3) who he believes have suffered the most. *As added by Acts 1981, P.L.298, SEC.4. Amended by Acts 1982, P.L.204, SEC.28.*

1981 Enactment. This section was derived from former section 35-5-6-5.

1982 Amendment. Acts 1982, P.L. 204, Sec. 28, in Subsec. (a), inserted "years", "at least one (1) of" and "or the parent, guardian, or custodian" in the first sentence, and deleted a former second sentence, which read:

"If there is more than one (1) next of kin, then the prosecuting attorney shall complete the procedure required by section 5 of this chapter with at least one (1) of them."

35-35-3-7 Inability to locate victim or next of kin; certification

Sec. 7. If the prosecuting attorney is unable to make a certification required under section 5 or 6 of this chapter because he was unable, after a reasonable effort, to locate the victim or his next of kin, then he shall certify this fact to the court. He may then submit the recommendation, and the court may act upon it. *As added by Acts 1981, P.L.298, SEC.4.*

1. Section 35-35-3-5 or 35-35-3-6.

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11-13-3-7 Release on parole or discharge; reinstatement; hearing; investigation; notice to victim; criteria; conduct of hearing; denial of parole; parole of persons imprisoned out of state

Sec. 3. (a) A person sentenced under IC 35-50 shall be released on parole or discharged from his term of imprisonment under that article without a parole release hearing.

(c) A victim of a forcible felony, as defined in IC 35-41-1, (or the next of kin of the victim if the felony resulted in the death of the victim) may request the department to notify him when the person imprisoned for the commission of the felony is:

- (1) to be discharged from imprisonment;
- (2) to be released on parole under IC 35-50-6-1; or
- (3) to have a parole release hearing under this chapter.

(d) If such a request is made in writing at least forty (40) days before the discharge, release, or hearing occurs, the department shall supply the requested information to the victim (or the next of kin in the appropriate case) at the address supplied by the victim (or next of kin).

(e) The probation officer conducting the presentence investigation shall inform the victim described in subsection (c), at the time of the interview with the victim, of his right to request such a notification.

(f) Notwithstanding IC 11-8-5-2 and IC 4-1-6, an inmate may not have access to the name and address of a victim making a request under this section.

(g) The notice required under subsection (c) must specify whether the prisoner is being discharged, released on parole, or having a parole release hearing, and must contain:

- (1) the name of the prisoner;
- (2) the date of the offense;
- (3) the date of the conviction;
- (4) the felony of which the prisoner was convicted;
- (5) the sentence imposed;
- (6) the amount of time served; and
- (7) the date and location of the interview (if applicable).

35-38-1-8 Presentence report to be considered by court before sentencing

Sec. 8. A defendant convicted of a felony may not be sentenced before a written presentence report is prepared by a probation officer and considered by the sentencing court. Delay of sentence until a presentence report is prepared does not constitute an indefinite postponement or suspension of sentence. *As added by P.L.311-1983; SEC.3.*

Formerly:

IC 35-4.1-4-9.

Cross References

Guilty plea, presentence report, see section 35-35-3-3.

Notes of Decisions

For annotations under prior law, see former section 35-4.1-4-9.

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35-33-1-9 "Recommendation" and "victim", presentence investigation matters; certification by probation officer when no written statements submitted

Sec. 9. (a) As used in this section, "recommendation" and "victim" have the meanings set out in IC 35-35-3-1.

(b) The presentence investigation consists of the gathering of information with respect to:

- (1) the circumstances attending the commission of the offense; and
- (2) the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, education, and personal habits.

(c) The presentence investigation may include any matter that the probation officer conducting the investigation believes is relevant to the question of sentence, and must include:

- (1) any matters the court directs to be included;
- (2) any written statements submitted to the prosecuting attorney by a victim under IC 35-35-3; and
- (3) any written statements submitted to the probation officer by a victim.

(d) If there are no written statements submitted to the probation officer, he shall certify to the court:

- (1) that he has attempted to contact the victim; and
- (2) that, if he has contacted the victim, he has offered to accept the written statements of the victim, or to reduce his oral statements to writing, concerning the sentence, including the acceptance of any recommendation.

As added by P.L.311-1983, SEC.3.

* * *

35-33-5-4 Return; initial disposition of property seized

Sec. 4. When the warrant is executed by the seizure of property or things described in it or of any other items:

- (1) The officer who executed the warrant shall make a return on it directed to the court or judge, who issued the warrant, and this return must indicate the date and time served and list the items seized.
- (2) The items so seized shall be securely held by the law enforcement agency whose officer executed the search warrant under the order of the court trying the cause, except as provided in section 6 of this chapter.

As added by Acts 1981, P.L.298, SEC.2.

1. See section 35-33-5-6.

1981 Enactment. This section was derived from former section 35-1-6-4.1.

Library References

Searches and Seizures § 3.8(1).
C.J.S. Searches and Seizures §§ 83, 84.

Notes of Decisions

For annotations under prior law, see former section 35-1-6-4.1.

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35-33-5-5 Disposition of property held as evidence; records

Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

- (A) the rightful owner has been notified to take possession of the property; or
 - (B) a reasonable effort has been made to ascertain ownership of the property;
- the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of it. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(f) The law enforcement agency disposing of property in any manner provided in subsections (b) and (c) of this section shall maintain certified records of any such disposition. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(g) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency. As added by Acts 1981, P.L.298, SEC.2. P.L.320-1983, SEC.6.

* * *

35-43-4-4 Evidence

(g) A judge may find that a photograph of property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully is competent evidence, if the photograph:

- (1) will serve the purpose of demonstrating the nature of the property; and
- (2) is otherwise admissible into evidence under all other rules of law governing the admissibility of photographs into evidence.

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The fact that it is impractical to introduce into evidence the actual property for any reason, including its size, weight, or unavailability, need not be established for a judge to find a photograph of that property to be competent evidence. If a photograph is found to be competent evidence under this subsection, it is admissible into evidence in place of the property and to the same extent as the property itself.

(h) A law enforcement agency that is holding as evidence property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully, may return that property to its owner if:

(1) the property has been photographed in a manner that will serve the purpose of demonstrating the nature of the property, and if these photographs are filed with or retained by the law enforcement agency in place of the property;

(2) receipt for the property is obtained from the owner upon delivery by the law enforcement agency;

(3) the prosecuting attorney who is prosecuting a case that involves the property has not requested the law enforcement agency to decline requests for return of the property to its owner; and

(4) the property may be lawfully possessed by the owner.

As amended by Acts 1980, P.L.200, SEC.2.

35-42-2-1 Battery

Sec. 1. A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery; a Class B misdemeanor. However, the offense is:

(C) a dependent (as defined by IC 35-46-1-1(2)) and is committed by a person having the care of the dependent, whether the care is assumed voluntarily or because of a legal obligation; or

(D) a married person and is committed by the person's spouse and the spouse committing the battery was previously convicted of battery in which the victim was the same spouse.

35-46-1-12 Exploitation of a dependent eighteen years of age or older

Sec. 12. A person who recklessly, knowingly, or intentionally exerts unauthorized use of a dependent eighteen (18) years of age or older or his resources, for one's own profit or advantage, or for the profit or advantage of another, commits exploitation of a dependent eighteen (18) years of age or older, a Class A misdemeanor. As added by Acts 1981, P.L.299, SEC.3.

1981 Enactment. Acts 1981, P.L. 299, Sec. 3, Library References added this section.

Cross References. Infants \Rightarrow 20. C.J.S. Infants §§ 95, 100 to 107. Sentences, Class A misdemeanors, see section 35-50-3-2.

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35-46-1-13 Battery, neglect or exploitation of dependent eighteen years of age or older; failure to report

Sec. 13. A person who:

(1) believes, or has reason to believe, that a dependent eighteen (18) years of age or older is the victim of battery, neglect, or exploitation as prohibited by this chapter or IC 35-42-2-1(2)(C); and

(2) fails to report the facts supporting that belief to a law enforcement agency having jurisdiction over battery, neglect, or exploitation of a dependent eighteen (18) years of age or older;

commits a Class C infraction. As added by Acts 1981, P.L.299, SEC.4.

1981 Enactment. Acts 1981, P.L. 299, Sec. 4, Library References added this section.

Cross References. Infants \Rightarrow 13. C.J.S. Infants §§ 5, 92, 93, 95, to 98. Sentences, Class C infractions, see section 34-4-32-4.

35-46-1-14 Reporting or documenting battery, neglect or exploitation; immunity from civil or criminal liability

Sec. 14. Any person acting in good faith who:

(1) makes or causes to be made a report of neglect, battery, or exploitation under this chapter or IC 35-42-2-1(2)(C);

(2) makes or causes to be made photographs or X-rays of a victim of suspected neglect or battery of a dependent eighteen (18) years of age or older; or

(3) participates in any official proceeding or a proceeding resulting from a report of neglect, battery, or exploitation of a dependent eighteen (18) years of age or older relating to the subject matter of that report;

is immune from any civil or criminal liability that might otherwise be imposed because of these actions. However, this section does not apply to a person accused of neglect, battery, or exploitation of a dependent eighteen (18) years of age or older. As added by Acts 1981, P.L.299, SEC.5.

CHAPTER 17.5

DOMESTIC VIOLENCE PREVENTION AND TREATMENT COUNCIL

Section	
4-23-17.5-1	Definitions
4-23-17.5-2	Establishment; membership; compensation
4-23-17.5-3	Duties
4-23-17.5-4	Domestic violence prevention and treatment fund; fee
4-23-17.5-5	Grants and contracts
4-23-17.5-6	Programs eligible for grants; domestic violence prevention and treatment centers
4-23-17.5-7	Domestic violence prevention and treatment centers; availability of services
4-23-17.5-8	Program evaluation
4-23-17.5-9	Agreements for receipt of funds

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4-23-17.5-1 Definitions

Sec. 1. As used in this chapter:

"Domestic violence prevention and treatment center" means an organized entity established by the city, town, county, or township, or established by any entity exempted from the Indiana gross income tax under IC 6-2-1-7(i),¹ created to provide services to prevent and treat domestic violence between spouses or former spouses.

4-23-17.5-1 STATE ADMINISTRATION

"DVPTC" means the domestic violence prevention and treatment council established under section 2 of this chapter.

"Interdepartmental board" means the interdepartmental board for the coordination of human service programs. *As added by Acts 1980, P.L.21, SEC.1.*

1. Repealed. See, now, section 6-2.1-3-20.

Historical Note

Acts 1980, P.L. 21, Sec. 1, eff. July 1, 1980, added this section.

Comparative Laws

Cal.—West's Ann.Welfare & Inst. Code § 18290 et seq. Mich.—M.C.L.A. § 400.1501 et seq.

Cross References

Interdepartmental board for the coordination of human service programs, see section 4-23-17-1 et seq.

Library References

Words and Phrases (Perm. Ed.)

4-23-17.5-2 Establishment; membership; compensation

Sec. 2. (a) There is established in the interdepartmental board for the coordination of human service programs the domestic violence prevention and treatment council. The DVPTC consists of three (3) members, at least two (2) of whom must be women, and all of whom must have experience and knowledge with regard to the problems of domestic violence.

(b) The governor shall appoint the members of the DVPTC, who shall each serve a term of three (3) years, with each term to begin on January 1 and to end on December 31. A member may be removed by the governor for cause. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term. The governor shall designate one (1) member to preside over the DVPTC.

(c) Each member of the DVPTC is entitled to:

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(1) reimbursement for traveling and other expenses as provided in the state travel policies and procedures, established by the department of administration and approved by the state budget agency; and

(2) the minimum salary per diem as provided in IC 4-10-11-2.1(b).

As added by Acts 1980, P.L.21, SEC.1.

4-23-17.5-3 Duties

Sec. 3. The DVPTC shall:

(1) coordinate and monitor programs for the prevention and treatment of domestic violence funded under this chapter;

(2) conduct research necessary to develop and implement programs for the prevention and treatment of domestic violence;

(3) review and recommend to the interdepartmental board the approval or disapproval of grants or contracts in accordance with section 5 of this chapter;

(4) develop a uniform method for law enforcement agencies in Indiana to report incidents of domestic violence to the DVPTC for each calendar quarter; and

(5) recommend to the interdepartmental board rules to be promulgated by the interdepartmental board under IC 4-22-2 to carry out the provisions of this chapter.

As added by Acts 1980, P.L.21, SEC.1.

4-23-17.5-4 Domestic violence prevention and treatment fund; fee

Sec. 4. (a) There is established the "domestic violence prevention and treatment fund". The interdepartmental board shall administer this fund, giving consideration to the recommendation of the DVPTC. Expenditures from the fund may only be made pursuant to appropriations made by the general assembly.

(b) In addition to any other costs or fees prescribed by law, a domestic violence prevention and treatment fund fee of ten dollars (\$10) shall be taxed as costs in all actions for dissolution of marriage. When collected, these amounts shall be paid to the treasurer of state, who shall deposit the money he receives under this subsection in the domestic violence prevention and treatment fund. *As added by Acts 1980, P.L.21, SEC.1.*

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4-23-17.5-5 Grants and contracts

Sec. 5. (a) A:

- (1) city, town, county, or township; or
- (2) any entity which is exempted from the Indiana gross income tax under IC 6-2-1-7(i);¹

which desires to receive a grant under this chapter or enter into a contract with the DVPTC, shall make application in the manner prescribed by the rules of the interdepartmental board.

(b) The interdepartmental board may make grants to and enter into contracts with those entities specified in subsection (a)(1) and subsection (a)(2). However, the interdepartmental board may grant no more than seventy-five percent (75%) of the funds necessary for the establishment or maintenance of a domestic violence and prevention treatment center during a specified time period, and the amount granted by the interdepartmental board for use by any single domestic violence and prevention treatment center may not exceed fifty thousand dollars (\$50,000) per year. *As added by Acts 1980, P.L.21, SEC.1.*

1. Repealed. See, now, section 6-2.1-3-20.

Historical Note

Acts 1980, P.L. 21, Sec. 1, eff. July 1, 1980, added this section.

Law Review Commentaries

Domestic relations; marriage: Survey of recent law. Helen Garfield, 14 Ind.L.Rev. 354 (1981).

Library References

Counties \S 111(1).
Municipal Corporations \S 226.
C.J.S. Counties \S 173.

C.J.S. Municipal Corporations \S 976
et seq.

4-23-17.5-6 Programs eligible for grants; domestic violence prevention and treatment centers

Sec. 6. (a) The interdepartmental board may use money from the domestic violence prevention and treatment fund when awarding a grant or entering into a contract under this chapter, if the money is used for the support of a program designed to:

- (1) establish or maintain a domestic violence prevention and treatment center offering the services listed in subsection (b);
- (2) develop and establish a training program for professional, paraprofessional, and volunteer personnel who are engaged in areas related to the problems of domestic violence;

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(3) conduct research necessary to develop and implement programs for the prevention and treatment of domestic violence; or

(4) develop and implement other means for the prevention and treatment of domestic violence.

(b) An entity described in section 5(a)(1) or section 5(a)(2) of this chapter may not receive funds under this chapter for the purposes of establishing and maintaining a domestic violence prevention and treatment center, unless the center, furnishes or agrees to furnish or arranges with a third party to furnish all of the following services:

(1) Emergency shelter, provided either at the center or by arrangement at temporary residential facilities available in the community, which is available to a person who fears imminent serious bodily injury from that person's spouse or former spouse and which is also available to the dependent children of that person.

(2) A twenty-four (24) hour telephone system to provide crisis assistance to a spouse or former spouse threatened by domestic violence.

(3) Emergency transportation services, if necessary to aid spouses or former spouses who are victims of domestic violence.

(4) Information, referral, and victim advocacy services in the areas of health care assistance, social and mental health services, family counseling, job training and employment opportunities, legal assistance, and counseling for dependent children.

(c) The interdepartmental board may use money from the domestic violence prevention and treatment fund to hire such staff as may be necessary to carry out the purposes of this chapter. *As added by Acts 1980, P.L.21, SEC.1.*

4-23-17.5-7 Domestic violence prevention and treatment centers; availability of services

Sec. 7. The services of a domestic violence prevention and treatment center, as described in section 6(b) of this chapter, shall be available to a person who:

- (1) has been assaulted by that person's spouse or former spouse; or

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(2) fears imminent serious bodily injury from that person's spouse or former spouse.

As added by Acts 1980, P.L.21, SEC.1.

Historical Note

Acts 1980, P.L. 21, Sec. 1, eff. July 1, 1980, added this section.

Law Review Commentaries

Domestic relations; marriage: Survey of recent law. Helen Garfield, 14 Ind.L.Rev. 354 (1981).

4-23-17.5-8 Program evaluation

Sec. 8. The DVPTC shall annually evaluate each program funded under this chapter. An evaluation of a domestic violence prevention and treatment center shall include an analysis of the kinds of services provided by the center, the number of persons served by the center, the effectiveness of the services provided by the center, and an analysis of the cost effectiveness of the center's program. *As added by Acts 1980, P.L.21, SEC.1.*

Historical Note

Acts 1980, P.L. 21, Sec. 1, eff. July 1, 1980, added this section.

4-23-17.5-9 Agreements for receipt of funds

Sec. 9. The interdepartmental board may enter into an agreement with an individual, corporation, partnership, unincorporated association, or governmental entity for the receipt of funds consistent with this chapter. *As added by Acts 1980, P.L.21, SEC.1.*

* * *

Chapter 5.1. Protective Order to Prevent Bodily Injury or Damage to Property.

Sec.	Sec.
34-4-5.1-1 Definitions	34-4-5.1-4 Summons to appear; issuance; service; hearing
34-4-5.1-2 Temporary protective order; petition; issuance of order	34-4-5.1-5 Hearings; order; expiration of order
34-4-5.1-3 Permanent protective order; petition; fees	34-4-5.1-6 Small claims court; assignment of exclusive jurisdiction over proceedings by mutual agreement

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34-4-5.1-1 Definitions

Sec. 1. As used in this chapter:

"Abuse" includes conduct or threatened conduct that if completed would cause:

- (1) bodily injury as defined by IC 35-41-1; or
- (2) damage to property.

"Person" includes human beings aged eighteen (18) or older, and emancipated minors. *As added by P.L.311-1983, SEC.1.*

1. So in 1983 enrolled act.

1983 Enactment. P.L. 311-1983, Sec. 1, added this chapter.

34-4-5.1-2 Temporary protective order; petition; issuance of order

Sec. 2. (a) A person may petition any court for a temporary protective order if that person or property has been abused by another.

(b) The petition:

- (1) must include the name, age, and address of the petitioner and the name and address (if known) of the person who allegedly abused the petitioner or property;
- (2) must include an allegation that the petitioner or specified property has been abused by the respondent;
- (3) must include a request that the court order the respondent to refrain from abusing the petitioner or property;
- (4) must be sworn to by the petitioner; and
- (5) may include a request that the court set a date for a permanent protective order hearing under this chapter.

(c) The judge of the court in which a temporary protective petition is filed shall immediately review the petition ex parte and shall issue an order directing the respondent to refrain from abusing the petitioner or property if the judge finds from the petition and other evidence that he may hear that there is probable cause to believe that the petitioner or property was or is in danger of being abused by the respondent. In the order, the judge shall:

- (1) include the date of the permanent protective order hearing (if requested by the petitioner); and
- (2) provide that the order expires:

- (A) when a permanent protective order hearing is held; or
- (B) after ten (10) days;

whichever occurs first.

As added by P.L.311-1983, SEC.1.

34-4-5.1-3 Permanent protective order; petition; fees

Sec. 3. (a) A person may petition any court of record for a permanent protective order if that person or property has been abused by another. The petition must:

- (1) state the name, age, and address of the petitioner and the name and address (if known) of the person who allegedly abused the petitioner or property;
- (2) list the name and age of any other person residing in the petitioner's household;
- (3) allege that the petitioner or specified property was abused by the respondent;
- (4) allege, if the petitioner and respondent are married, that no dissolution or legal separation proceeding is pending; and
- (5) request relief provided under section 5(a) of this chapter.

(b) The clerk of the court may waive any filing fees if the petitioner demonstrates by affidavit that he is unable to pay the fees. *As added by P.L.311-1983, SEC.1.*

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34-4-5.1-4 Summons to appear; issuance; service; hearing

Sec. 4. (a) When a petition is filed, the clerk shall issue a summons to appear at a hearing to the respondent that:

- (1) gives notice of the date, time, and place of the hearing; and
- (2) informs the respondent that he must appear before the court to answer the petition.

(b) The clerk shall serve the respondent with the summons to appear in accordance with Rule 4.1 of the Rules of Trial Procedure.

(c) The hearing shall be held not more than ten (10) days after the petition is filed. *As added by P.L.311-1983, SEC.1.*

34-4-5.1-5 Hearing; order; expiration of order

Sec. 5. (a) At the hearing, if the allegation of abuse is proved by a preponderance of the evidence, the court:

- (1) shall order the respondent to refrain from abusing, harassing, or disturbing the peace of the petitioner;
- (2) shall order the respondent to refrain from damaging any property; and
- (3) if the petitioner and respondent are married, may order, if no proceeding for dissolution or legal separation is pending:
 - (A) the eviction of the respondent from the dwelling of the petitioner so long as the respondent is not the sole owner or lessee of the petitioner's dwelling;
 - (B) the respondent not to transfer, encumber, damage, conceal, or otherwise dispose of property jointly owned with the petitioner;
 - (C) either or both parties to pay child support to the custodian of any minor children of the parties;
 - (D) either party to pay maintenance to the other party;
 - (E) either or both parties to receive counseling or to participate in a domestic violence education program; or
 - (F) any combination of the above.

(b) Any part of a court order authorized under subsection (a)(3) of this section expires:

- (1) when a petition for dissolution or legal separation (with respect to the petitioner's and the respondent's marriage) had been filed; or
- (2) not more than ninety (90) days after the order is issued;

whichever occurs first. *As added by P.L.311-1983, SEC.1.*

34-4-5.1-6 Small claims court; assignment of exclusive jurisdiction over proceedings by mutual agreement

Sec. 6. The small claims court judges in a county containing a consolidated city may by mutual agreement assign to one (1) or more divisions of the court exclusive jurisdiction over proceedings initiated under this chapter in the small claims court. *As added by P.L.311-1983, SEC.1.*

Category		Citation
1.	Victim Compensation Program	912.1 et seq.
1.1	Responsible Agency	912.1(1)
1.2	Eligible Claimants	912.5; 912.7(2),(3)
1.3	Losses Covered	912.6
1.4	Minimum and Maximum Award	912.6
1.5	Required to Show Financial Need	
1.6	Required to Report Crime - Time Limit	912.4(2)
1.7	Filing of Claim - Time Limit	912.4(1)
1.8	Emergency Award	912.11
1.9	Funding	911.1 et seq.
2.	Restitution	910.1 et seq.
2.1	Sentencing Option	
2.2	Mandatory Condition of Probation	910.4
2.3	Mandatory Condition of Parole	910.5(4)
2.4	Mandatory Sentence	910.2; 910.5(2),(3) (mandatory condition of work release)
2.5	Administration/Enforcement	
3.	Escrow and Forfeiture of Offender Profits	910.15
4.	Witness Fees	622.69
5.	Victim's Bill of Rights	
6.	Protection from Intimidation	
6.1	Crime Defined	720.4
6.2	Protective Orders	
7.	Victim Notification	
7.1	of Compensation Program	912.3(3)
7.2	of Witness Fees	
7.3	of Final Disposition	
7.4	of Plea Agreement	
7.5	of Cancelled Proceeding	
7.6	of Right to Participate in Sentencing Hearing	
7.7	of Parole Hearing	
7.8	of Release of Offender	
7.9	of Escape of Offender	
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	901.3(5)
8.2	Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	809.1 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	236.1 et seq., 236.4, 236.6
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	236.9
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	236.9 (domestic abuse)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	912.3(4), 912.10
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	236.10 (domestic abuse information)
15.4 Sexual Assault Counselor Privilege	

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Iowa Code Annotated (West)

CHAPTER 912. CRIME VICTIM REPARATION PROGRAM [NEW]

Sec. 912.1.	Definitions.	Sec. 912.8.	Reparation when money insufficient.
912.2.	Award of reparation.	912.9.	Erroneous or fraudulent payment—penalty.
912.3.	Duties of commissioner.	912.10.	Release of information.
912.4.	Application for reparation.	912.11.	Emergency payment reparation.
912.5.	Reparations payable.	912.12.	Right of action against perpetrator—subrogation.
912.6.	Computation of reparation.	912.13.	Sunset clause.
912.7.	Reductions and disqualifications.		

Acts 1982 (69 G.A.) ch. 1258, §§ 4 and 25 provided:

Victim reparation intent. It is the intent of the general assembly to provide a program for compensating and assisting innocent victims of violent criminal acts who suffer bodily injury or death as a consequence, and for encouraging greater public cooperation in the successful apprehension and prosecution of criminal offenders. It is also the intent of the general assembly that the department of public safety, each county attorney, and each local law enforcement agency shall publicize the crime victim reparation program and promote the use of the program.

This Act takes effect July 1, 1982. However, payments for reparation under sections 5 through 16 of this Act shall only be made to victims of criminal acts which are committed on or after January 1, 1983.

912.1. Definitions

As used in sections 5 through 16 of this Act, unless the context otherwise requires:

1. "Department" means the department of public safety.
2. "Commissioner" means the commissioner of the department or the commissioner's designee.
3. "Victim" means a person who suffers personal injury or death as a result of any of the following:
 - a. A crime.
 - b. The good faith effort of a person attempting to prevent a crime.
 - c. The good faith effort of a person to apprehend a person suspected of committing a crime.
4. "Crime" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony, an aggravated misdemeanor, or a serious misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except when the intention is to cause personal injury or death.
5. "Dependent" means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim's death.
6. "Reparation" means compensation awarded by the commissioner as authorized by this chapter.

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912.2. Award of reparation

The commissioner shall award reparations authorized by sections 5 through 16 of this chapter if the commissioner is satisfied that the requirements for reparation have been met.

Acts 1982 (69 G.A.) ch. 1253, § 6, eff. July 1, 1982.

912.3. Duties of commissioner

The commissioner shall:

1. Adopt rules pursuant to chapter 17A relating to the administration of the crime victim reparation program, including the filing of claims pursuant to the program, and the hearing and disposition of the claims.

2. Hear claims, determine the results relating to claims, and reinvestigate and reopen cases as necessary.

3. Publicize through the department, county sheriff departments, municipal police departments, county attorney offices, and other public or private agencies, the existence of the crime victim reparation program, including the procedures for obtaining reparation under the program.

4. Request from the department of social services, the Iowa department of job service, the industrial commissioner, the attorney general, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim reparation program.

5. Require medical examinations of victims as needed. The victim shall be responsible for the cost of the medical examination if reparation is made. The department shall be responsible for the cost of the medical examination from funds appropriated to the department for the crime victim reparation program if reparation is not made to the victim unless the cost of the examination is payable as a benefit under an insurance policy or subscriber contract covering the victim or the cost is payable by a health maintenance organization.

6. Render to the governor and the general assembly by January 1, 1984, a written report of activities undertaken for the crime victim reparation program.

Acts 1982 (69 G.A.) ch. 1253, § 7, eff. July 1, 1982.

912.4. Application for reparation

1. To claim a reparation under the crime victim reparation program, a person shall apply in writing on a form prescribed by the commissioner and file the application with the commissioner within one hundred eighty days after the date of the crime or within one hundred twenty days after the date of death of the victim.

2. A person is not eligible for reparation unless the crime was reported to the local police department or county sheriff department within twenty-four hours of its occurrence. However, if the crime cannot reasonably be reported within that time period, the crime shall have been reported within twenty-four hours of the time a report can reasonably be made.

Acts 1982 (69 G.A.) ch. 1253, § 8, eff. July 1, 1982.

912.5. Reparations payable

The commissioner may order the payment of reparation:

1. To or for the benefit of the person filing the claim.

2. To a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of personal injury to the victim.

3. To or for the benefit of one or more dependents of the victim, in the case of death of the victim. If two or more dependents are entitled to a reparation, the reparation may be apportioned by the commissioner as the commissioner determines to be fair and equitable among the dependents.

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912.6. Computation of reparation

The commissioner shall make reparation as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim, not to exceed two thousand dollars per victim unless otherwise specified:

1. Reasonable charges incurred for medical care.

2. Loss of income from work the victim would have performed and received compensation for if the victim had not been injured.

3. Reasonable replacement value of clothing that is held for evidentiary purposes, but not to exceed one hundred dollars.

4. Reasonable funeral and burial expenses not to exceed one thousand dollars.

Acts 1982 (69 G.A.) ch. 1258, § 10, eff. July 1, 1982.

912.7. Reductions and disqualifications

Reparations are subject to reduction and disqualification as follows:

1. A reparation shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

a. From or on behalf of, the person who committed the crime.

b. From an insurance payment or program, including but not limited to workers' compensation or unemployment compensation.

c. From public funds.

d. As an emergency award under section 912.11.

2. A reparation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following:

a. Consent, provocation, or incitement by the victim.

b. An act committed by a person living in the same household with the victim, unless the criminal conviction for the act is obtained.

c. An act committed by a person who is, at the time of the criminal act, the spouse, child, stepchild, parent, stepparent, brother, stepbrother, sister, or stepsister of the victim, or the parent or stepparent of the victim's spouse or a brother, stepbrother, sister, or stepsister of the victim's spouse, unless a criminal conviction for the act is obtained.

d. The victim assisting, attempting, or committing a criminal act.

3. A person is disqualified from receiving a reparation if the victim has not cooperated with an appropriate law enforcement agency in the investigation or prosecution of the crime relating to the claim, or has not cooperated with the department in the administration of the crime victim reparation program.

Acts 1982 (69 G.A.) ch. 1258, § 11, eff. July 1, 1982.

912.8. Reparation when money insufficient

Notwithstanding this chapter a victim otherwise qualified for a reparation under the crime victim reparation program, is not entitled to the reparation when there is insufficient money from the appropriation for the program to pay the reparation.

Acts 1982 (69 G.A.) ch. 1258, § 12, eff. July 1, 1982.

912.9. Erroneous or fraudulent payment—penalty

1. If a payment or overpayment of a reparation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the reparation. The commissioner may waive, decrease, or adjust the amount of the repayment of the reparation. However, if the commissioner does not notify the recipient of the erroneous payment or overpayment within one year of the date the reparation was made, the recipient is not liable for the repayment of the reparation.

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2. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment of the reparation.

Acts 1982 (69 G.A.) ch. 1258, § 13, eff. July 1, 1982.

912.10. Release of information

A person in possession or control of investigative or other information pertaining to an alleged crime or a victim filing for a reparation shall allow the inspection and reproduction of the information by the commissioner upon the request of the commissioner, to be used only in the administration and enforcement of the crime victim reparation program. Information and records which are confidential under section 68A.7 and information or records received from the confidential information or records remain confidential under this section.

A person does not incur legal liability by reason of releasing information to the commissioner as required under this section.

Acts 1982 (69 G.A.) ch. 1258, § 14, eff. July 1, 1982.

912.11. Emergency payment reparation

If the commissioner determines that reparation may be made and that undue hardship may result to the person if partial immediate payment is not made, the commissioner may order an emergency reparation to be made to the person, not to exceed five hundred dollars.

Acts 1982 (69 G.A.) ch. 1258, § 15, eff. July 1, 1982.

912.12. Right of action against perpetrator—subrogation

A right of legal action by the victim against a person who has committed a crime is not lost as a consequence of a person receiving reparation under the crime victim reparation program. If a person receiving reparation under the program seeks indemnification which would reduce the reparation under section 912.7, subsection 1, the commissioner is subrogated to the recovery to the extent of payments by the commissioner to or on behalf of the person. The commissioner has a right of legal action against a person who has committed a crime resulting in payment of reparation by the department to the extent of the reparation payment. However, legal action by the commissioner does not affect the right of a person to seek further relief in other legal actions.

* * *

CHAPTER 911. SURCHARGE ADDED TO CRIMINAL PENALTIES [New]

Sec.	Sec.
911.1. Criminal penalty surcharge established.	911.2. Ten percent surcharge.
	911.3. Disposition of surcharge.

911.1. Criminal penalty surcharge established

A criminal penalty surcharge shall be levied against certain law violators as provided in section 911.2. The surcharge shall be deposited as provided in section 911.3 and shall be used for the maintenance and improvement of criminal justice programs, law enforcement efforts, victim reparation, crime prevention, and improvement of the professional training of personnel, and the planning and support services of the criminal justice system.

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Acts 1982 (69 G.A.) ch. 1258, § 1, eff. July 1, 1982.

Title of Act:

An Act relating to criminal justice programs by imposing a ten percent penalty assessment surcharge on certain fines and forfeitures, establishing a crime victim reparation program, striking certain references to a Criminal Justice Improvement Fund in Acts of the Sixty-ninth General

Assembly, 1981 Session, and making appropriations to certain departments for criminal justice programs, and a victim reparation program.

Library References

Criminal Law § 1220.
C.J.S. Criminal Law § 2007.

911.2. Ten percent surcharge

When a court imposes a fine or forfeiture for a violation of a state law, or of a city or county ordinance except an ordinance regulating the parking of motor vehicles, the court shall assess an additional penalty in the form of a surcharge equal to ten percent of the fine or forfeiture imposed. In the event of multiple offenses, the surcharge shall be based upon the total amount of fines or forfeitures imposed for all offenses. When a fine or forfeiture is suspended in whole or in part, the surcharge shall be reduced in proportion to the amount suspended. This section applies only with respect to criminal actions commenced on or after July 1, 1982.

911.3 DISPOSITION OF SURCHARGE. When a court assesses a surcharge under section 911.2, the clerk of the district court shall transmit ninety percent of the surcharge collected to the treasurer of state by the fifteenth day of the following month. The treasurer of state shall deposit the money in the general fund of the state. The clerk of the district court shall transmit ten percent of the surcharge to the county treasurer ~~for deposit in the county court expense fund~~ or shall remit ten percent of the surcharge to the city that was the plaintiff in any action for deposit in the general fund of the city.

SURCHARGE ADDED TO CRIMINAL PENALTIES

§ 911.3

retaining legal representation at any stage of the criminal proceedings against the person, including the appeals process.

5. An action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this section is null and void as against the public policy of this state.

Acts 1982 (69 G.A.) ch. 1155, § 1.

Title of Act:

An Act relating to money or other compensation received by criminals as a result of the com-

mission of crime. Acts 1982 (69 G.A.) ch. 1155.

Library References

Criminal Law § 1220.
C.J.S. Criminal Law § 2007.

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CHAPTER 910. VICTIM RESTITUTION [NEW]

Sec.		Sec.	
910.1.	Definitions.	910.7.	Petition for hearing.
910.2.	Restitution ordered by sentencing court.	910.8.	Civil liability.
910.3.	Determination of amount of restitution.	910.9.	Collection of payments—payment by clerk of court.
910.4.	Condition of probation—payment plan.	910.10 to 910.14.	Reserved.
910.5.	Condition of work release or parole.	910.15.	Distribution of moneys received as a result of the commission of crime.
910.6.	Payment plan—copy to victims.		

910.1. Definitions

As used in this chapter, unless the context otherwise requires:

1. "Victim" means any person who has suffered pecuniary damages as a result of the offender's criminal activities. However, for purposes of this chapter, an insurer is not a victim and does not have a right of subrogation.

2. "Pecuniary damages" means all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event; except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "pecuniary damages" includes damages for wrongful death.

3. "Criminal activities" means any crime for which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered and any other crime committed after July 1, 1982 which is admitted or not contested by the offender, whether or not prosecuted. However, "criminal activities" does not include simple misdemeanors under chapter 321.

4. "Restitution" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution shall also include the payment of court costs, court-appointed attorney's fees or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when ~~no-victim-has-suffered-pecuniary-damages-and~~ the offender cannot reasonably pay all or part of the court costs, court-appointed attorney's fees, or the expense of a public defender

910.2 RESTITUTION ORDERED BY SENTENCING COURT. In all criminal cases except simple misdemeanors under chapter 321, in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of ~~his-or-her~~ the offender's criminal activities and, to the extent that the

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offender is reasonably able to do so, to the county where conviction was rendered for court costs, court-appointed attorney's fees or the expense of a public defender when applicable. However, victims shall be paid in full before restitution payments are paid to the county for court costs, court-appointed attorney's fees or for the expense of a public defender. When ~~no-victim-has-suffered-pecuniary-damages-and~~ the offender is not reasonably able to pay all or a part of the court costs, court-appointed attorney's fees or the expense of a public defender, the court may require the offender in lieu of that portion of the court costs, court-appointed attorney's fees, or expense of a public defender for which the offender is not reasonably able to pay, to perform a needed public service for any governmental agency or for a private, nonprofit agency which provides a service to the youth, elderly or poor of the community. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender. The judicial district department of correctional services shall provide for the assignment of the offender to a public agency or private nonprofit agency to perform the required service.

Sec. 3. This Act applies only to persons sentenced on or after its effective date.

910.3. Determination of amount of restitution

The court shall require the county attorney to promptly prepare a statement of pecuniary damages to victims of the defendant and shall require the clerk of court to prepare a statement of court-appointed attorney's fees, the expense of a public defender and court costs which shall be promptly provided to the presentence investigator. These statements shall become a part of the presentence report. If a defendant believes no person suffered pecuniary damages, the defendant shall so state. If the defendant has any mental or physical impairment which would limit or prohibit the performance of a public service, the defendant shall so state. The court may order a mental or physical examination, or both, of the defendant to determine a proper course of action. At the time of sentencing, the court shall set out the amount of restitution including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. This shall be known as the plan of restitution.

Acts 1982 (69 G.A.) ch. 1162, § 4, eff. July 1, 1982.

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910.4. Condition of probation—payment plan

When restitution is ordered by the sentencing court and the offender is placed on probation, restitution shall be a condition of probation. Failure of the offender to comply with the plan of restitution, plan of payment, or community service requirements when community service is ordered by the court as restitution, shall constitute a violation of probation and shall constitute contempt of court. The court may hold the offender in contempt, revoke probation, or may extend the period of probation in such circumstances. However, if the period of probation is extended it shall not be for more than the maximum period of probation for the offense committed as provided in section 907.7.

If an offender's probation is revoked, his or her assigned probation officer shall forward to the director of the division of adult corrections, information concerning the offender's restitution plan, restitution plan of payment, the restitution payment balance, and any other pertinent information concerning or affecting restitution by the offender.

When the offender is committed by the court to be supervised by a judicial district department of correctional services, is committed to a county jail, or to an alternate facility, the judicial district department of correctional services office or individual charged with supervision of the offender shall prepare a restitution plan of payment taking into consideration the offender's income, physical and mental health, age, education, employment and family circumstances. The judicial district department of correctional services office or individual charged with supervision of the offender shall review the plan of restitution ordered by the court, and shall submit a restitution plan of payment to the sentencing court. When community service is ordered by the court as restitution, the restitution plan of payment shall set out a plan to meet the requirement for the community service. The court may approve or modify the plan of restitution and restitution plan of payment. When there is a significant change in the offender's income or circumstances, the judicial district department of correctional services office or individual which has supervision of the plan of payment shall submit a modified restitution plan of payment to the court. When there is a transfer of supervision from one agent, agency, or judicial district department of correctional services office or individual charged with supervision of the offender to another, the sending agent, agency or judicial district department office or individual shall forward to the receiving agent, agency, or judicial district department, office or individual all

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necessary information regarding the balance owed against the original amount of restitution ordered and the balance of public service required. When the offender's circumstances and income have significantly changed, the receiving agent, agency, or judicial district department office or individual shall submit a new plan of payment to the sentencing court for approval or modification based on the considerations enumerated in this section.

910.5. Condition of work release or parole

1. When an offender is committed to the custody of the director of the division of adult corrections pursuant to a sentence of confinement, the sentencing court shall forward to the director, a copy of the offender's restitution plan, present restitution payment plan if any, and other pertinent information concerning or affecting restitution by the offender. However, if the offender is committed to the custody of the director after revocation of probation, this information shall be forwarded by the offender's probation officer.

An offender committed to a penal or correctional facility of the state, shall make restitution while placed in that facility. Upon commitment to the custody of the director of the division of adult corrections, the director or the director's designee shall prepare a restitution plan of payment or modify any existing plan of payment. The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances. The director or the director's designee may modify the plan of payment at any time to reflect the offender's present circumstances.

2. If an offender is to be placed on work release from an institution under the control of the director of the division of adult corrections, restitution shall be a condition of work release. The chief of the bureau of community correctional services of the division of adult corrections, shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment. The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances. The bureau chief may modify the plan of payment at any time to reflect the offender's present circumstances. Failure of the offender to comply with the restitution plan of payment, including the community service requirement, if any, shall constitute a violation of a condition of work release and the work release privilege may be revoked.

3. If an offender is to be placed on work release from a facility under control of a county sheriff, restitution shall be a condition of work release. The judicial district department of correctional services office or individual charged with supervision of the offender shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment. The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment and family circumstances.

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Failure of the offender to comply with the restitution plan of payment including the community service requirement, if any, ~~shall constitute~~ constitutes a violation of a condition of work release. The ~~judicial-district-department-of-correctional-services~~ office or individual charged with supervision of the offender may modify the plan of restitution at any time to reflect the offender's present circumstances.

4. If an offender is to be placed on parole, restitution shall be a condition of parole. The parole office to which the offender will be assigned shall prepare a restitution plan of payment or may modify any previously existing restitution plan of payment. The new or modified plan of payment shall reflect the offender's present circumstances concerning the offender's income, physical and mental health, education, employment, and family circumstances. Failure of the offender to comply with the restitution plan of payment including a community service requirement, if any, shall constitute a violation of a condition of parole. The parole officer may modify the plan of payment any time to reflect the offender's present circumstances. A restitution plan of payment or modified plan of payment, prepared by a parole officer, must meet the approval of the chief of the bureau of community correctional services of the division of adult corrections.

5. The director of the division of adult corrections shall promulgate rules pursuant to chapter 17A concerning the policies and procedures to be used in preparing and implementing restitution plans of payment for offenders who are committed to an institution under the control of the director of the division of adult corrections, for offenders who are to be released on work release from institutions under the control of the director of the division of adult corrections, for offenders who are placed on probation, and for offenders who are released on parole.

910.6 PAYMENT PLAN--COPY TO VICTIMS. Each ~~agent, agency, or judicial-district-department-of-correctional-services~~ office or individual preparing a restitution plan of payment or modified restitution plan of payment ~~shall forward~~, when it is approved by the court if approval is required under section 910.4, or when the plan is completed if court approval under section 910.4 is not required, shall forward a copy to the clerk of court in the county in which the offender was sentenced. The clerk of court shall forward a copy of the plan of payment or modified plan of payment to the victim or victims.

Sec. 4. Section 910.7, Code 1983, is amended to read as follows:

910.7 PETITION FOR HEARING. At any time during the period of probation, parole or incarceration, the offender or the ~~agent, agency or judicial-district-department-of-correctional-services~~ office or individual who prepared the offender's

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restitution plan, may petition the court and the court shall grant a hearing on any matter related to the plan of restitution or restitution plan of payment. The court at any time prior to the expiration of the offender's sentence, may modify the plan of restitution or the restitution plan of payment, or both, and may extend the period of time for the completion of restitution.

910.8. Civil liability

This chapter and proceedings under this chapter shall not limit or impair the rights of victims to sue and recover damages from the offender in a civil action. However, any restitution payment by the offender to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event.

Acts 1982 (69 G.A.) ch. 1162, § 9, eff. July 1, 1982.

910.9. Collection of payments--payment by clerk of court

An offender making restitution pursuant to a restitution plan of payment shall make the payment monthly to the clerk of court of the county from which the offender was sentenced, unless the restitution plan of payment provides otherwise.

The clerk of court shall maintain a record of all receipts and disbursements of restitution payments and shall disburse all moneys received to the victims designated in the plan of

Court costs, court-appointed attorney's fees, and expenses for public defenders, shall not be withheld by the clerk of court until all victims have been paid in full. Payments to victims shall be made by the clerk of court at least quarterly. Payments by a clerk of court shall be made no later than the last business day of the quarter, but may be made more often at the discretion of the clerk of court. The clerk of court receiving final payment from an offender, shall notify all victims that full restitution has been made, and a copy of the notice shall be sent to the sentencing court. Each ~~agent, agency, or judicial-district-department-of-correctional-services~~ office or individual charged with supervising an offender who is required to perform community service as full or partial restitution shall keep records to assure compliance with the portions of the plan of restitution and restitution plan of payment relating to community service and, when the offender has complied fully with the community service requirement, notify the sentencing court.

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910.15. Distribution of moneys received as a result of the commission of crime

1. Every person, firm, corporation, partnership, association, or other legal entity contracting with any person or the representative or assignee of any person, initially convicted of a crime in this state, shall pay over to the attorney general any money or other compensation received from the reenactment of the crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of the person's thoughts, feelings, opinions, or emotions regarding the crime, which money or other compensation would otherwise, by terms of the contract, be owing to the person so convicted or the person's representatives. The attorney general shall deposit the money or other compensation in an escrow account for the benefit of and payable to any victim or representative of the victim, who recovers a money judgment against the person or the person's representatives. Notwithstanding section 614.1, a victim or the victim's representative who has a cause of action for a crime for which an escrow account or receivership is established pursuant to this section, may bring the action against the escrow account or against the property in receivership within five years of the date the escrow account is established.

When the nature of the compensation to the person initially convicted of the crime is such that it cannot be placed in an escrow account, the attorney general shall assume the powers of a receiver under chapter 680 in taking charge of the property for benefit of and payable to any victim or representative of the victim. In those instances, the date the attorney general assumed the power of a receiver, shall be considered the date an escrow account was established for purposes of this section.

2. Once an escrow account or receivership is established, the attorney general shall make reasonable efforts to notify victims and representatives of victims of the escrow account or receivership and their possible rights under this section. The reasonable efforts shall include but are not limited to mailing the notification to known victims or representatives of known victims. The cost of notification shall be paid from the escrow account or from the sale of property held in receivership.

3. Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by the person that five years have elapsed from the date of establishment of the escrow account and further that no actions are pending against the person, the attorney general shall immediately pay over any money in the escrow account to the person.

4. Notwithstanding the other provisions of this section, the attorney general shall make payments from the escrow account or property held in receivership to the person accused of the crime upon the order of a court of competent jurisdiction after a showing by the person that the money or other property shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against the person, including the appeals process.

5. An action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this section is null and void as against the public policy of this state.

Acts 1982 (69 G.A.) ch. 1155, § 1.

Title of Act:

An Act relating to money or other compensation received by criminals as a result of the com-

mission of crime. Acts 1982 (69 G.A.) ch. 1155.

Library References

Criminal Law § 1220.

C.J.S. Criminal Law § 2007.

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622.69. Witness fees

Witnesses shall receive ten dollars for each full day's attendance, and five dollars for each attendance less than a full day, and mileage expenses at the rate specified in section 79.9 for each mile actually traveled.

* * *

720.4 Tampering with witnesses or jurors

A person who offers any bribe to any person who he or she believes has been or may be summoned as a witness or juror in any judicial or arbitration proceeding, or any legislative hearing, or who makes any threats toward such person or who forcibly or fraudulently detains or restrains such person, with the intent to improperly influence such witness or juror with respect to his or her testimony or decision in such case, or to prevent such person from testifying or serving in such case, or who, in retaliation for anything lawfully done by any witness or juror in any case, harasses such witness or juror, commits an aggravated misdemeanor.

* * *

901.3. Presentence investigation report

If a presentence investigation is ordered by the court, the investigator shall promptly inquire into all of the following:

1. The defendant's characteristics, family and financial circumstances, needs, and potentialities, including the presence of any previously diagnosed mental disorder.
2. The defendant's criminal record and social history.
3. The circumstances of the offense.
4. The time the defendant has been in detention.
5. The harm to the victim, the victim's immediate family, and the community.
6. The defendant's potential as a candidate for the community service sentence program established pursuant to section 907.13.

* * *

Chapter 809

DISPOSITION OF SEIZED PROPERTY

- Sec.
 809.1 Seized property.
 809.2 Notice of hearing.
 809.3 Claimant.
 809.4 Hearing.
 809.5 Return.
 809.6 Other disposition.
 809.7 Appeal.

Disposition tables are provided in the front part of this volume for use in tracing the subject matter of repealed and renumbered sections into the criminal law revision of 1976.

Cross References

Alcoholic liquor, disposition of seized property, see § 127.7 et seq.
 Controlled substances, forfeitures, see § 204.505.
 Fish and game, violations, disposition of seized property, see § 110.20.

809.1. Seized property

For the purposes of this chapter, "seized property" means all property or any part thereof seized in the execution of a search warrant, arrest warrant, or arrest without warrant; and includes the following:

1. Property which has been obtained in violation of law.
2. Property, the possession of which is unlawful.
3. Property used or possessed with the intent to be used as the means of committing a public offense or concealed to prevent the offense from being discovered.
4. Property subject to forfeiture except forfeitable conveyances described in chapter 127 and except forfeitable controlled substances described in chapter 204 and except property subject to forfeiture pursuant to section 723.13.
5. Other property relevant and material as evidence in a criminal prosecution.

The clerk of court shall issue a notice, containing a reasonable description of the seized property and the time, place, and cause of its seizure, within seventy-two hours after the time of its seizure in a manner reasonably calculated to apprise affected persons of their right to file a claim for the return of the property, pursuant to section 809.3.

Any person claiming the right to possession of seized property may make application for its return in the office of the clerk of court for the county in which it was seized.

All claims made for the return of the seized property shall be set for hearing and such hearing shall be held not less than five nor more than thirty days after the filing of the first claim.

1. Property not required for evidence or use in further investigation may be returned by the officer to the person from whom it was seized without the requirement of a hearing, providing that that person's right of possession is not prohibited by law.

2. In the event that the finding of the right to possess is in favor of a claimant, other than the state, the magistrate shall order the return of the property, providing that:

a. Possession of such property by the claimant is not prohibited by law; and

b. The property is not needed as evidence in any judicial proceedings; or, if needed, satisfactory arrangements have been made for its return for subsequent use as evidence. If such proceedings have not been completed, the magistrate shall make satisfactory arrangements for return of the property upon their completion.

CHAPTER 236. DOMESTIC ABUSE

- | | | | |
|--------|----------------------------|---------|-----------------------------|
| Sec. | | Sec. | |
| 236.1. | Short title. | 236.6. | Emergency orders. |
| 236.2. | Definitions. | 236.7. | Procedure. |
| 236.3. | Commencement of actions. | 236.8. | Contempt. |
| 236.4. | Hearings—temporary orders. | 236.9. | Domestic abuse information. |
| 236.5. | Disposition. | 236.10. | Confidentiality of records. |
| | | 236.11. | Duty of peace officer. |

Provisions constituting Chapter 236, Code 1981, consisting of sections 236.1 to 236.11 were enacted by Acts 1979 (68 G.A.) ch. 147, §§ 1 to 11.

Former chapter 236, Maternity Hospitals was repealed by Acts 1969 (63 G.A.) ch. 152, § 61 and Acts 1976 (66 G.A.) ch. 1056, § 45.

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For purposes of this chapter, unless a different meaning is clearly indicated by the context:

1. "Domestic abuse" means committing assault as defined in section 708.1 under either of the following circumstances:

a. The assault is between family or household members who resided together at the time of the assault.

b. The assault is between separated spouses not residing together at the time of the assault.

2. "Family or household members" means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity, except children under eighteen.

Acts 1979 (68 G.A.) ch. 147, § 2, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided: "This Act is effective on January first following its enactment."

Library References
Breach of the Peace ⇒ 16.
C.J.S. Breach of the Peace § 17.

236.3. Commencement of actions

A person may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides. The petition shall state the:

1. Name of the plaintiff and the name and address of the plaintiff's attorney.
2. Name and address, if known, of the defendant.
3. Relationship of the plaintiff to the defendant.
4. Nature of the alleged domestic abuse.
5. Name and age of each child under eighteen whose welfare may be affected by the controversy.
6. Desired relief, including a request for temporary emergency orders.

If the plaintiff files an affidavit stating that he or she does not have funds available to pay the cost of filing and service, the petition shall be filed and service shall be made without payment of costs. If a petition is filed and service is made without payment of costs, the court shall determine at the hearing if the plaintiff is indigent. If the court finds that the plaintiff is not indigent, the court may order the plaintiff to pay the costs of filing and service.

Acts 1979 (68 G.A.) ch. 147, § 3, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided: "This Act is effective on January first following its enactment."

236.4. Hearings—temporary orders

1. Within ten days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence.

2. The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.

3. If a hearing is continued, the court may make or extend any temporary order under subsection 2 that it deems necessary.

4. Upon application of a party, the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers.

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5. The court shall advise the defendant of a right to be represented by counsel of the defendant's choosing and to have a continuance to secure counsel.

6. Hearings shall be recorded.

Acts 1979 (68 G.A.) ch. 147, § 4, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided: "This Act is effective on January first following its enactment."

Notes of Decisions

1. Construction and application

In executing a temporary removal order under this section a peace officer is justified in the use of

reasonable force, which the peace officer reasonably believes to be necessary to effect the temporary removal or to defend any person from bodily harm while making temporary removal, and may use such reasonable force, as necessary to enter the residence of the child or child's parent, where he or she has reasonable cause to believe the child is admittance for execution of the temporary removal order and such demand is not satisfied. Op. Atty. Gen. (Hege), September 18, 1981.

236.5. Disposition

Upon a finding that the defendant has engaged in domestic abuse:

1. The court may order that the plaintiff and the defendant receive professional counseling, either from a private source approved by the court or from a source appointed by the court. Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the court expense fund.

2. The court may grant a protection order or approve a consent agreement which may contain but is not limited to any of the following provisions:

- a. That the defendant cease domestic abuse of the plaintiff.
- b. That the defendant grant possession of the residence to the plaintiff to the exclusion of the defendant or that the defendant provide suitable alternate housing for the plaintiff.
- c. That the defendant stay away from the plaintiff's residence, school or place of employment.
- d. The awarding of temporary custody of or establishing temporary visitation rights with regard to children under eighteen.
- e. That the defendant pay the clerk a sum of money for the separate support and maintenance of the plaintiff and children under eighteen.

An order for counseling, a protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or a consent agreement at any time upon a petition filed by either party and after notice and hearing.

3. An order or consent agreement under this section shall not affect title to real property.

4. A certified copy of any order or approved consent agreement shall be issued to the plaintiff, the defendant and law enforcement agencies having jurisdiction to enforce the order or consent agreement. Any subsequent amendment or revocation of an order or consent agreement shall be forwarded by the clerk to all individuals and agencies previously notified.

Acts 1979 (68 G.A.) ch. 147, § 5, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided: "This Act is effective on January first following its enactment."

236.6. Emergency orders

1. When the court is unavailable from the close of business at the end of the day or week to the resumption of business at the beginning of the day or week, a petition may be

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filed before a district judge, or district associate judge designated by the chief judge of the judicial district, who may grant emergency relief in accordance with section 236.5, subsection 2 if the district judge or district associate judge deems it necessary to protect the plaintiff from domestic abuse, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.

2. An emergency order issued under subsection 1 shall expire seventy-two hours after issuance. When the order expires, the plaintiff may seek a temporary order from the court pursuant to section 236.4.

3. A petition filed and emergency order issued under this section and any documentation in support of the petition and order shall be immediately certified to the court. The certification shall commence a proceeding for purposes of section 236.3.

Acts 1979 (68 G.A.) ch. 147, § 6, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided:
"This Act is effective on January first following its enactment."

236.7. Procedure

1. A proceeding under this chapter shall be held in accordance with the rules of civil procedure, except as otherwise set forth in this chapter, and is in addition to any other civil or criminal remedy.

2. The plaintiff's right to relief under this chapter is not affected by leaving the residence or household to avoid domestic abuse.

Acts 1979 (68 G.A.) ch. 147, § 7, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided:
"This Act is effective on January first following its enactment."

236.8. Contempt

The court may hold a party in contempt for a violation of an order issued pursuant to this chapter or for violation of a court-approved consent agreement. If held in contempt, the defendant shall serve a jail sentence which may be on weekends.

Acts 1979 (68 G.A.) ch. 147, § 8, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided:
"This Act is effective on January first following its enactment."

236.9. Domestic abuse information

State and local law enforcement agencies shall collect and maintain domestic abuse information. They shall relay this information at least quarterly to the central registry for domestic abuse information within the department of social services.

The registry may compile statistics and issue reports, provided identifying details of the subject of domestic abuse are deleted.

Access to domestic abuse information in the registry is authorized only:

1. To a district court upon a finding that information is necessary for the resolution of an issue arising in a case involving domestic abuse.

2. To a person conducting bona fide research on domestic abuse, if the details identifying a subject of domestic abuse are deleted.

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3. To registry or department personnel where necessary to the performance of their official duties.

Acts 1979 (68 G.A.) ch. 147, § 9, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided:
"This Act is effective on January first following its enactment."

236.10. Confidentiality of records

The file in a domestic abuse case shall be sealed by the clerk of court when it is complete and after the time for appeal has expired. However, the clerk shall open the file upon application to and order of the court for good cause shown.

Acts 1979 (68 G.A.) ch. 147, § 10, eff. Jan. 1, 1980.

Acts 1979 (68 G.A.) ch. 147, § 12, provided:
"This Act is effective on January first following its enactment."

236.11. Duty of peace officer

A peace officer shall use every reasonable means to enforce an order or approved consent agreement issued pursuant to this chapter. A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided that he or she acts in good faith, on probable cause and without malice.

Category	Citation
1. Victim Compensation Program	74-7301 et seq.
1.1 Responsible Agency	74-7303(a)
1.2 Eligible Claimants	74-7301(c), 74-7305(b)
1.3 Losses Covered	74-7302, 74-7301(i)
1.4 Minimum and Maximum Award	74-7305(g),(h),(i)
1.5 Required to Show Financial Need	74-7305(d)(1)
1.6 Required to Report Crime - Time Limit	74-7305(e)
1.7 Filing of Claim - Time Limit	74-7305(b)
1.8 Emergency Award	
1.9 Funding	74-7317
2. Restitution	
2.1 Sentencing Option	21-4603(2)(c),(d), 21-4610(3)(k)
2.2 Mandatory Condition of Probation	21-4610(4)(a)
2.3 Mandatory Condition of Parole	22-3717(j)
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	28-125, 28-150
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	21-3806
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	21-4603(3)
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	21-4604(2)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	60-472
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	74-7305(g)
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	60-3101 et seq., 60-3107
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	74-7304(f)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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Kansas Statutes Annotated

Title 74

Article 73.—CRIME VICTIMS REPARATIONS BOARD

74-7301. Definitions. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Allowance 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. Such term includes a total charge not in excess of seven hundred fifty dollars (\$750) for expenses in any way related to funeral, cremation or burial; but such term shall 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) "Board" means the crime victims reparations board established under K.S.A. 1978 Supp. 74-7303.

(c) "Claimant" means any of the following persons claiming reparations under this act: A victim; a dependent of a deceased victim; a third person other than a collateral source; or an authorized person acting on behalf of any of them.

(d) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this act which the victim or claimant has received, or which is readily available to the victim or claimant, from:

- (1) The offender;
- (2) the government of the United States or any agency thereof, a state or any of its political subdivisions or an instrumentality or two (2) or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this act;
- (3) social security, medicare and medicaid;

(4) state-required temporary non-occupational disability insurance;

(5) workmen's compensation;

(6) wage continuation programs of any employer;

(7) proceeds of a contract of insurance payable to the victim for loss which the victim sustained because of the criminally injurious conduct; or

(8) a contract providing prepaid hospital and other health care services or benefits for disability.

(e) "Criminally injurious conduct" means conduct that (1) occurs or is attempted in this state, (2) poses a substantial threat or personal injury or death and (3) either 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; but such term shall not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when such conduct was intended to cause personal injury or death.

(f) "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 the victim's death.

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

(h) "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 the decedent 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.

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(i) "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 service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

(j) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and non-pecuniary damage.

(k) "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 self or family, if such person had not been injured.

(l) "Work loss" means loss of income from work the injured person would have performed if such person had not been injured, and expenses reasonably incurred by such person in obtaining services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed by such person or by income such person would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake.

(m) "Victim" means a person who suffers personal injury or death as a result of (1) criminally injurious conduct, (2) the good faith effort of any person to prevent criminally injurious conduct or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

History: L. 1978, ch. 130, § 1; July 1.

Law Review and Bar Journal References:

This and following sections discussed in "Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 399 (1979).

74-7302. Reparations for crime victims economic loss, when. 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.

History: L. 1978, ch. 130, § 2; July 1.

74-7303. Crime victims reparations board; appointment; terms; chairperson; compensation and expenses. (a) There is hereby established in the executive department a crime victims reparations board, consisting of three members appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 1982 Supp. 75-4315b. At least one member of the board shall be a person regularly admitted to practice law in this state. Each member of the board shall be appointed for a term of four years and until a successor is appointed and qualified. Upon the expiration of any term of office, the governor shall appoint a qualified successor. In case of a vacancy on the board prior to the expiration of a term, the governor shall appoint a successor of like qualifications to fill the unexpired term.

(b) The governor shall designate a member of the board who is regularly admitted to practice law in this state to serve as chairperson at the pleasure of the governor. Members of the board shall receive compensation, subsistence allowances, mileage and expenses as provided by K.S.A. 75-3223 and amendments thereto.

74-7304. Same; powers and duties. In addition to the powers and duties specified elsewhere in this act, the board shall have the following powers and duties:

(a) The duty to establish and maintain a principal office and other necessary offices within this state, to appoint employees and agents as necessary and to prescribe their duties and compensation, all within the limitations and conditions of appropriations made therefor;

(b) the duty to adopt by rule or regulation a description of the organization of the board, stating the general method and course of operation of the board;

(c) the duty to adopt rules and regulations to carry out the provisions of this act, including rules for the allowance of attorneys' fees for representation of claimants; and to adopt rules and regulations providing for discovery proceedings, including medical examination, consistent with the provisions of this act relating thereto. Rules and regulations adopted by the board shall be statements of general applicability which

implement, interpret or prescribe policy, or describe the procedure or practice requirements of the board;

(d) the duty to prescribe forms on which applications for reparations shall be made;

(e) the duty to hear and determine all matters relating to claims for reparations, and the power to reinvestigate or reopen claims without regard to statutes of limitation or periods of prescription;

(f) the power to request investigations and data from county and district attorneys and law enforcement officers to enable the board to determine whether and the extent to which a claimant qualifies for reparations. Confidentiality provided by law covering claimant's or victim's juvenile court records shall not be applicable in proceedings under this act;

(g) 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;

(h) the power to take notice of judicially recognizable facts and general, technical and scientific facts within their specialized knowledge;

(i) the duty to make available for public inspection all rules and regulations, written statements of policy, interpretations formulated, adopted or used by the board in discharging its functions, and decisions and opinions of the board;

(j) the duty to publicize the availability of reparations and information regarding the filing of claims therefor.

History: L. 1978, ch. 130, § 4; July 1.

74-7305. Claims for reparations; application; conditions; limitations; amount. (a) An application for reparations shall be made in the manner and form prescribed by the board.

(b) Reparations may not be awarded unless the claim has been filed with the board within one year after the injury or death upon which the claim is based. Reparations may not be awarded to a claimant who was the offender or an accomplice of the offender and may not be awarded to another person 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 the offender's accomplice or to the parent, child, brother or sister of the offender or the offender's accomplice.

(c) Reparations otherwise payable to a claimant shall be diminished:

(1) To the extent, if any, that the economic loss upon which the claimant's claim is based is recouped from other persons, including collateral sources; and

(2) to the extent, if any, that the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom the claimant claims.

(d) (1) Reparations may be awarded only if the board finds that unless the claimant is awarded reparations the claimant will suffer financial stress as the result of economic loss otherwise reparable. A claimant suffers financial stress only if the claimant cannot maintain the claimant's customary level of health, safety and education for self and dependents without undue financial hardship. In making its determination of financial stress, the board shall consider all relevant factors, including:

(A) The number of claimant's dependents;

(B) the usual living expenses of the claimant and the claimant's family;

(C) the special needs of the claimant and the claimant's dependents;

(D) the claimant's income and potential earning capacity; and

(E) the claimant's resources.

(2) Except in cases of rape or attempted rape, reparations may not be awarded if the claimant's economic loss does not exceed 10% of the claimant's 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 the claimant's total financial resources:

(A) One year's earnings;

(B) the claimant's equity in the claimant's home, not exceeding \$30,000;

(C) one motor vehicle; and

(D) any other property which would be exempt from execution under the code of civil procedure.

(3) Notwithstanding paragraph (2) of this subsection:

(A) The board may award reparations to a claimant who possesses net financial resources in excess of those allowable under paragraph (2) of this subsection if, considering the claimant's age, life expectancy, physical or mental condition and expectancy of income, including future earning power, it determines that the claimant's financial resources will become exhausted during the claimant's lifetime; or

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

(e) 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.

(f) The board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw or reduce an award of reparations.

(g) Except in cases of rape or attempted rape, reparations may not be awarded if the economic loss is less than \$100.

(h) Reparations for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss may not exceed \$200 per week.

(i) 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 \$10,000 in the aggregate.

History: L. 1978, ch. 130, § 5; L. 1982, ch. 329, § 1; July 1.

74-7306. Copy of application to attorney general; powers. Promptly upon receipt of an application for reparations, the board may forward a copy of the application and all supporting papers to the attorney general who, if requested by the board, may investigate the claim, appear in hearings on the claim and present evidence in opposition to or support of an award.

History: L. 1978, ch. 130, § 6; July 1.

74-7307. Disposition of claim; informal; formal; hearing; notice; record; determination. (a) Unless otherwise 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. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice of hearing shall include:

(1) A statement of the time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted, except that 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 definitive statement shall be furnished.

(b) Every interested person shall be afforded an opportunity to appear and be heard and to offer evidence and argument on any issue relevant to such person's interest, and to examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to such person's interest.

(c) A record of the proceedings shall be made and shall include:

(1) The application and supporting documents;

(2) all pleadings, motions and intermediate rulings;

(3) evidence offered, received or considered;

(4) a statement of matters officially noticed;

(5) all staff memoranda or data submitted to the board in connection with its consideration of the case; and

(6) offers of proof, objections and rulings.

(d) 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.

(e) 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.

74-7308. Condition of claimant or victim; no privilege, exception; examination or autopsy; report; other reports relevant to injury. (a) There shall be 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 conditions of the claimant or victim in a proceeding under this act in which such condition is an element.

(b) 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 the order shall require the person to file with the board a detailed written report of the examination or autopsy. The report shall set out the findings of the person making the report, including results of all tests made, diagnoses, prognoses and other conclusions and reports of earlier examinations of the same conditions.

(c) On request of the person examined, the board shall furnish a copy of the report to such person. If the victim is deceased, the board, on request, shall furnish to the claimant a copy of the report.

(d) 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.

74-7309. Refusal to comply with order or assertion of unauthorized privilege, effect. If a person refuses to comply with an order under this act or asserts a privilege other than one 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 district 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.

74-7310. Prosecution or conviction, effect; suspension of proceedings pending prosecution, when; tentative award. 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. 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 K.S.A. 74-7314.

History: L. 1978, ch. 130, § 10; July 1.

74-7311. Attorneys' fees. As part of any order, the board shall determine and award a reasonable attorney's fee, commensurate with services rendered, to be paid by the state to the attorney representing the claimant. Additional attorneys' fees may be awarded by a court in the event of review, and attorneys' fees may be denied on a finding that the claim or appeal is frivolous. Awards of attorneys' fees shall be in addition to awards of reparations and may be made whether or not reparations are awarded. It shall be unlawful for an attorney to contract for or receive any larger sum than the amount allowed pursuant to this section.

History: L. 1978, ch. 130, § 11; July 1.

74-7312. State's subrogation rights; actions for damages; board's involvement; disposition of moneys recovered. (a) If reparations are awarded, the state shall be subrogated to all the claimant's rights to receive or recover benefits or advantages for economic loss for which, and only to the extent that, reparations are awarded, from a source which is or, if readily available to the victim or claimant would be, a collateral source.

(b) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct upon which reparations are claimed or awarded, the claimant must give the board prior written notice of the proposed action. After receiving the notice, the board shall promptly (1) join in the action as a party plaintiff to recover reparations awarded, (2) require the claimant to bring the action in the claimant's individual name, as a trustee in behalf of the state, to recover reparations awarded or (3) reserve its rights

and do neither in the proposed action. If, as requested by the board, the action is brought by the claimant as trustee and the claimant recovers reparations awarded by the board, the claimant may deduct from the reparations recovered in behalf of the state the reasonable expenses, including attorneys' fees, allocable by the court for that recovery.

(c) 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 award for noneconomic detriment, punitive damages, if any, and the award for economic loss.

(d) Any moneys received or recovered by or on behalf of the state pursuant to the provisions of this section, less any deductions allowable hereunder, shall be deposited in the state treasury and credited to the state general fund.

History: L. 1978, ch. 130, § 12; July 1.

74-7313. Reparations; method of payment; future economic loss; award not subject to process or assignable, exceptions. (a) The board may provide for the payment of an award in a lump sum or in installments. The portion of an award that equals the amount of economic loss accrued to the date when the award is made shall be paid in a lump sum. An award for allowable expense that would accrue after the date when the award is made shall not be paid in a lump sum. Except as otherwise provided in subsection (b), the portion [of] an award that is not [to] be paid in a lump sum shall be paid in installments.

(b) At the request of the claimant the board may pay future economic loss, other than allowable expense, in a lump sum, but only upon a finding by the board that either:

(1) The award in a lump sum will promote the interests of the claimant; or
(2) the present value of all future economic loss, other than allowable expense, does not exceed \$1,000.

(c) An award payable in installments for future economic loss may be made only for a period for which the board can reasonably determine future economic loss. An award

payable in installments for future economic loss may be modified by the board upon its finding that a material and substantial change of circumstances has occurred.

(d) An award shall not be subject to execution, attachment, garnishment or other process, except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that the creditor has provided products, services or accommodations the costs of which are included in the award.

(e) An assignment or agreement to assign any right to reparations for loss accruing in the future is unenforceable, except (1) an assignment of any right to reparations for work loss to secure payment of maintenance or child support; or (2) an assignment of any 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.

History: L. 1978, ch. 130, § 13; L. 1982, ch. 152, § 27; Jan. 1, 1983.

74-7314. Tentative award, when. 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 and shall be deducted from the final award, or shall be repaid by and recoverable from the claimant to the extent that it exceeds the final award.

History: L. 1978, ch. 130, § 14; July 1.

74-7315. Board's decision; reconsideration; judicial review. (a) 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 upon which periodic payments are being made. An order on reconsideration of an award shall not require a refund of amounts previously paid, unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.

(b) A final decision of the board shall be subject to judicial review on appeal by the claimant, the attorney general or the of-

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fender in the manner prescribed by K.S.A. 1978 Supp. 60-2101.

History: L. 1978, ch. 130, § 15; July 1.

74-7316. Annual report by board. The board shall prepare and transmit annually to the governor and the legislature a report of its activities, including the name of each claimant (except that, in cases involving a sexual offense under article 35 of chapter 21 of the Kansas Statutes Annotated, the names of victims shall be deleted from the report), a brief description of the facts in each case, the amount of any reparations awarded and a statistical summary of claims and awards made and denied.

History: L. 1978, ch. 130, § 16; July 1.

74-7317. Crime victims reparations fund established; use. (a) There is hereby established in the state treasury the crime victims reparations fund.

(b) Moneys in the crime victims reparations fund shall be used only for the payment of reparations pursuant to K.S.A. 74-7301 *et seq.* Payments from the fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board or by a person or persons designated by the chairperson.

History: L. 1978, ch. 130, § 17; L. 1982, ch. 167, § 1; July 1.

74-7318. Application and construction of act. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

History: L. 1978, ch. 130, § 19; July 1.

Article 74.—CORRECTIONS OMBUDSMAN BOARD

Cross References to Related Sections:

Department of corrections, correctional institutions, see ch. 75, art. 52.

74-7401. Corrections ombudsman board; composition; appointment; terms; vacancies; officers; compensation and expenses; powers and duties; access to corrections records and facilities. (a) There is hereby established and created as an independent agency within the executive branch of state government, the corrections ombudsman board. Prior to September 1, 1980,

such board shall consist of fifteen (15) members, three (3) of whom shall be appointed by the governor; three (3) of whom shall be appointed by the attorney general; three (3) of whom shall be appointed by the chief justice of the supreme court; three (3) of whom shall be appointed by the speaker of the house of representatives; and, three (3) of whom shall be appointed by the president of the senate. On and after September 1, 1980, such board shall consist of ten (10) members, two (2) of whom shall be appointed by the governor; two (2) of whom shall be appointed by the attorney general; two (2) of whom shall be appointed by the chief justice of the supreme court; two (2) of whom shall be appointed by the speaker of the house of representatives; and, two (2) of whom shall be appointed by the president of the senate.

The members of said board shall hold their respective offices for a term of four (4) years and until their successors are appointed and qualified. On September 1, 1978, and on September 1 of each fourth year thereafter, the governor, attorney general, chief justice of the supreme court, speaker of the house of representatives and the president of the senate shall each appoint one member to such board. On September 1, 1980, and on September 1 of each fourth year thereafter, the governor, attorney general, chief justice of the supreme court, speaker of the house of representatives and the president of the senate shall each appoint one member to such board. Members serving on such board on the effective date of this act shall serve as members of the corrections ombudsman board for the remainders of the respective terms for which appointed. In case of a vacancy on such board, the person appointing the member creating the vacancy shall appoint a successor who shall serve for the remainder of the term of the member creating such vacancy. The members of such board shall be selected as far as practicable so that they will be residents of different parts of the state.

(b) The board shall select a chairperson from among its members. The board shall meet upon the call of the chairperson, or upon the call of the majority of the members of such board. A majority of the members of such board shall constitute a quorum to do business.

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(c) Members of the board attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation as provided in subsection (a) of K.S.A. 75-3223, and amendments thereto, and in addition thereto the amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.

(d) The board shall have the following powers and duties:

(1) Appoint and supervise the activities of the ombudsman of corrections and establish the amount of compensation to be paid to such ombudsman as provided by K.S.A. 74-7403 or any amendments thereto.

(2) Adopt and file with the division of budget its budget estimates for the operation of the board and the office of ombudsman of corrections.

(3) Make recommendations to the secretary of corrections concerning policies, procedures and administrative actions of the department of corrections, which recommendations shall not be binding upon the secretary.

(e) The secretary of corrections shall provide members of the board with access to records not otherwise privileged by law and with reasonable access to facilities and persons under the jurisdiction of the secretary subject to conditions and time limitations the secretary may establish in order to insure the orderly operation of the correctional institutions.

Title 21, Article 46

21-4603. Authorized dispositions. (1)

(2) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(a) Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one year, to jail for the term provided by law;

(b) impose the fine applicable to the offense;

(c) release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(d) suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution; or

(e) impose any appropriate combination of (a), (b), (c) and (d).

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation the court shall direct that the defendant be under the supervision of a probation officer.

The court in committing a defendant to the custody of the secretary of corrections shall fix a maximum term of confinement within the limits provided by law. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

(3) Any time within 120 days after a sentence is imposed or within 120 days after probation has been revoked, the court may modify such sentence or revocation of probation by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 days after the receipt by the clerk of the district court of the mandate from the supreme court or court of appeals. Upon hearing, the court may reduce the minimum term of confinement at any time before the expiration thereof when such reduction is recommended by the secretary of corrections and the court is satisfied that the best interests of the public will not be jeopardized and that the welfare of the inmate will be served by such reduction. The power here conferred upon the court includes the

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power to reduce the minimum below the statutory limit on the minimum term prescribed for the crime of which the inmate has been convicted. The recommendation of the secretary of corrections, the hearing on the recommendation and the order of reduction shall be made in open court. Notice of the recommendation of reduction of sentence and the time and place of the hearing thereon shall be given by the inmate, or by the inmate's legal counsel, at least 21 days prior to the hearing to the county or district attorney of the county where the inmate was convicted. After receipt of such notice and at least 14 days prior to the hearing, the county or district attorney shall give notice of the recommendation of reduction of sentence and the time and place of the hearing thereon to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's next of kin if the next of kin's address is known to the county or district attorney. Proof of service of each notice required to be given by this subsection shall be filed with the court.

21-4610. Conditions of probation or suspension of sentence. (1) Except as required by subsection (4), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation or suspension of sentence, except that the court shall condition any order granting probation or suspension of sentence on the defendant's obedience of the laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject.

(3) The court may impose any conditions of probation or suspension of sentence that it deems proper, including but not limited to requiring that the defendant:

(k) Perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors.

(4) In addition to any other conditions of probation or suspension of sentence, the court shall order the defendant to comply

with each of the following conditions:

(a) Make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court, unless the court finds compelling circumstances which would render a plan of reparation or restitution unworkable.

Title 22

22-3717. Parole eligibility; procedure for granting parole; rules and regulations; conditions of parole. (a) Except as provided in subsection (b), an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(j) Whenever the Kansas adult authority orders the parole of an inmate, the authority, unless it finds compelling circumstances which would render a plan of reparation or restitution unworkable, shall order as a condition of parole that the parolee make reparation or restitution to the aggrieved party for the damage or loss caused by the parolee's crime, in an amount and manner specified in the journal entry of the court that sentenced the inmate or, if not specified in the journal entry, in an amount and manner determined by the adult authority.

Title 28

28-125. Witness fees and mileage; oath. (a) Witnesses shall receive the following fees:

(1) For attending before any court or grand jury, or before any judge, referee, or commission, \$10 per day;

(2) for attending on an inquest, \$10; and

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(3) for each mile necessarily and actually traveled in going to and returning from the place of attendance, mileage at the rate prescribed by law if the distance is more than one mile.

(b) No witness shall receive per diem or mileage in more than one case covering the same period of time or the same travel, and each witness shall be required to make oath that the fees claimed have not been claimed or received in any other case. No juror shall receive pay as a witness while serving as a juror.

(c) Witnesses shall be entitled to receive, for attending before any attorney general, county attorney or assistant attorney general, under any provision authorizing the officers to compel the attendance of such witnesses, the sum of \$10 per day, together with mileage at the rate prescribed by law for each mile necessarily traveled in going to and returning from the place of attendance.

(d) Witness fees shall be paid by the board of county commissioners where the violation of the law being investigated is alleged to have occurred.

28-150. Payment of fees by county in criminal cases; jury fees in civil and criminal cases. In all cases where the fees prescribed by this act in criminal cases for the sheriff, clerk and witnesses for the state, are not paid by the defendant or the prosecuting witness, they shall be paid by the county in which the criminal prosecution is instituted: *Provided*, That no such fees shall be paid by the board of county commissioners until the sheriff shall have filed his affidavit that said fees cannot be collected from any other source. Jury fees in civil and criminal cases shall be paid by the county.

Title 21

21-3806. Corruptly influencing a witness. Corruptly influencing a witness is inducing or attempting to induce any witness by bribery, threat or other means to absent himself from the jurisdiction or to avoid the

service of process, or deterring or attempting to deter a witness by such means from giving evidence in any trial or other proceeding, or to testify falsely therein.

Corruptly influencing a witness is a class E felony.

21-4604. Presentence investigation and report. (1) Whenever a defendant is convicted of a misdemeanor, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever a defendant is convicted of a felony, the court shall require that a presentence investigation be conducted by a probation officer or in accordance with K.S.A. 21-4603, unless the court finds that adequate and current information is available in a previous presentence investigation report or from other sources.

(2) Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. Except where specifically prohibited by law, all local governmental and state agencies shall furnish to the officer conducting the presentence investigation such records as such officer may request. If ordered by the court, the presentence investigation shall include a physical and mental examination of the defendant.

Title 60

K. PHOTOGRAPHIC EVIDENCE

60-472. Photographs of property wrongfully taken; use in prosecution, procedure; return of property to owner. In any prosecution for a crime involving the wrongful taking of property, photographs of the property alleged to have been wrongfully taken may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property had been introduced as evi-

dence. Such photographs shall bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property taken, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken and the name of the photographer. Such writing shall be made under oath by the investigating law enforcement officer

Article 31.—PROTECTION FROM ABUSE ACT

Cross References to Related Sections:
Kansas Children Protection Act, see 38-716 et seq.

60-3101. Short title. K.S.A. 1982 Supp. 60-3101 to 60-3111, inclusive, shall be known and may be cited as the protection from abuse act.

(a) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together, or who formerly resided together and both parties continue to have legal access to the residence:

(1) Willfully attempting to cause bodily injury, or willfully or wantonly causing bodily injury.

(2) Willfully placing, by physical threat, another in fear of imminent bodily injury.

(3) Engaging in any of the following acts with a minor under sixteen (16) years of age who is not the spouse of the offender:

(A) The act of sexual intercourse.

(B) Any lewd fondling or touching of the person of either the minor or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the minor or the offender or both.

(b) "Adult" means any person eighteen (18) years of age or older.

(c) "Family or household members" means spouses, parents and children, or other persons related by consanguinity or affinity, including persons who have entered into a common law marriage.

History: L. 1979, ch. 92, § 2; L. 1980, ch. 177, § 1; July 1.

60-3103. Jurisdiction. The district court shall have jurisdiction over all proceedings under this act. The right of a household member to relief under this act

shall not be affected by such member's leaving the residence or household to avoid further abuse.

60-3104. Commencement of proceeding; no docket fee required. A household member may seek relief under this act or any parent or adult household member may seek relief under this act on behalf of any minor child or children by filing a verified petition with any district or associate district judge of the judicial district or with the clerk of the court, alleging abuse by another household member. No docket fee shall be required for proceedings under this act.

60-3105. Emergency relief. (a) When the court is unavailable, a verified petition, accompanied by a proposed order, may be presented to any district judge or associate district judge of the judicial district. The judge may grant relief in accordance with paragraphs (1), (2) or (5) of subsection (a) of K.S.A. 1982 Supp. 60-3107 and amendments thereto, or any combination thereof, if the judge deems it necessary to protect the plaintiff or minor child or children from abuse. An emergency order pursuant to this subsection may be granted *ex parte*. Immediate and present danger of abuse to the plaintiff or minor child or children shall constitute good cause for the entry of the emergency order.

(b) An emergency order issued under subsection (a) shall expire when the court is available or within seventy-two (72) hours, whichever occurs first. At that time, the plaintiff may seek a temporary order from the court.

(c) The judge shall note on the petition and any order granted, including any documentation in support thereof, the filing date, together with the judge's signature, and shall deliver them to the clerk of the court on the next day of the resumption of business of the court.

History: L. 1979, ch. 92, § 5; L. 1980, ch. 177, § 4; July 1.

60-3106. Hearings; temporary orders pending hearing. (a) Within ten (10) days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a prepon-

derance of the evidence. The court shall advise the defendant of the right to be represented by counsel.

(b) Prior to the hearing on the petition and upon a finding of good cause shown, the court on motion of a party may enter such temporary relief orders in accordance with paragraphs (1), (2) or (5) of subsection (a) of K.S.A. 1982 Supp. 60-3107 and amendments thereto, or any combination thereof, as it deems necessary to protect the plaintiff or minor children from abuse. Temporary orders may be granted *ex parte*. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.

(c) If a hearing under subsection (a) is continued by consent of the parties, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

History: L. 1979, ch. 92, § 6; L. 1980, ch. 177, § 5; July 1.

60-3107. Relief; expiration of orders or consent agreements, when; conflicting orders, procedure: (a) The court shall be empowered to approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children or grant any of the following orders:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children.

(2) Granting possession of the residence or household to a party to the exclusion of the other party.

(3) Requiring a party to provide suitable, alternate housing for such party's spouse and any minor children of the parties.

(4) Awarding temporary custody and establishing temporary visitation rights with regard to minor children.

(5) Ordering a law enforcement officer to evict a party from the residence or household.

(6) Ordering support payments by a party for the support of a party's minor child or a party's spouse.

(7) Awarding costs and attorneys' fees to either party.

(8) Making provision for the possession of personal property of the parties.

(9) Requiring the parties to seek counseling to aid in the cessation of abuse.

(b) Any order of support issued pursuant to subsection (a)(6) shall expire thirty (30) days after the date of issuance. On motion of the plaintiff, the court may extend the effect of the order an additional thirty (30) days. If, within the period that such order of support is in existence, a party files a petition for divorce, separate maintenance or annulment and an application for temporary support pursuant to K.S.A. 60-1601 *et seq.*, the order of support shall continue in effect until an order is issued on the application for temporary support or until such earlier time as ordered by the court on motion of either party at any time for good cause shown. If a household member has previously commenced an action for divorce, separate maintenance or annulment prior to commencement of an action under this act, the court may enter, pursuant to this act, an order inconsistent with the order previously entered in the divorce, separate maintenance or annulment proceeding. If an inconsistent order is entered pursuant to this act, the order previously entered in the other proceeding shall be vacated upon motion in the proceeding pursuant to this act.

(c) Subject to the provisions of subsections (a)(2), (a)(5) and (b), a protection order or approved consent agreement shall be for a fixed period of time not to exceed one year.

(d) The court may amend its order or agreement at any time upon motion filed by either party.

(e) No order or agreement under this act shall in any manner affect title to any real property.

History: L. 1979, ch. 92, § 7; L. 1980, ch. 177, § 6; July 1.

Cross References to Related Sections:

Violation of restraining order as constituting criminal trespass, see 21-3721.

60-3108. Notice of protection orders. A copy of any order under this act shall be issued to the plaintiff, the defendant and the police department of the city where the plaintiff resides. If the plaintiff does not reside in a city or resides in a city with no police department, a copy of the order shall be issued to the sheriff of the county where the plaintiff resides.

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60-3109. Procedure. Except as otherwise provided in this act, any proceeding under this act shall be in accordance with chapter 60 of the Kansas Statutes Annotated and shall be in addition to any other available civil or criminal remedies.

History: L. 1979, ch. 92, § 9; July 1.

60-3110. Contempt. If, upon hearing, the court finds a violation of any order or consent agreement, the court may find the defendant in contempt pursuant to K.S.A. 1980 Supp. 20-1204a.

History: L. 1979, ch. 92, § 10; L. 1980, ch. 177, § 8; July 1.

60-3111. Limit on use of act. No person may use the procedure provided for in this act more than twice in any twelve-month period, except in the case of abuse of a minor.

History: L. 1979, ch. 92, § 11; July 1.

Category	Citation
1. Victim Compensation Program	346.010 et seq.
1.1 Responsible Agency	346.020(1); 346.030
1.2 Eligible Claimants	346.050
1.3 Losses Covered	346.050
1.4 Minimum and Maximum Award	346.130(3); 346.130(6)
1.5 Required to Show Financial Need	346.140(3)
1.6 Required to Report Crime - Time Limit	346.130(1)(c)
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Chapter 346

COMPENSATION OF CRIME VICTIMS

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346.010 Purpose

The general assembly hereby declares that it serves a public purpose and is of benefit to the state to indemnify those needy residents of the Commonwealth of Kentucky who are innocent victims of criminal acts and who suffer bodily injury or death as a consequence thereof. Such persons or their dependents may thereby suffer disability, incur financial hardships and become dependent upon public assistance. To that end, it is the general assembly's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime.

346.030 Crime victims compensation board

(1) There is hereby created a board, to be known as the crime victims compensation board. Such board shall consist of five members not all of whom shall be engaged in the same occupation or profession and the said board shall be appointed by the governor.

(2) The term of office of each such member shall be four (4) years, except that of the members first appointed two (2) shall serve for terms of four (4) years, two (2) shall serve for terms of three (3) years and one (1) shall serve for a term of two (2) years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(3) The governor shall designate one (1) member of the board as chairman thereof, to serve as such at the pleasure of the governor.

(4) The governor shall establish the compensation of the members of the board pursuant to the provisions of KRS 64.640.

346.020 Definitions

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the crime victims compensation board.

(3) "Criminally injurious conduct" means conduct that occurs or is attempted in this jurisdiction, poses a substantial threat of personal injury or death, and is punishable by fine, imprisonment or death. Acts which, but for the insanity or mental irresponsibility or lack of capacity of the perpetrator, would constitute criminal conduct shall be deemed to be criminally injurious conduct. The operation of a motor vehicle, motorcycle, train, boat, aircraft or other vehicle in violation of law does not constitute a criminally injurious conduct unless the injury or death was intentionally inflicted.

(4) "Family," when used with reference to a person, shall mean:

(a) Any person related to such person within the third degree of consanguinity;

(b) Any person maintaining a sexual relationship with such person; or

(c) Any person residing in the same household with such person.

(5) "Victim" means a resident of this state or the resident of a reciprocal state, who suffers personal injury or death from a criminal act in Kentucky as a result of:

(a) Criminally injurious conduct;

(b) A good faith effort to prevent criminally injurious conduct; or

(c) A good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

346.040 Powers and duties of board

The board shall have the following powers and duties:

(1) To establish and maintain necessary offices within this state, appoint employees and agents as necessary and prescribe their duties and compensation.

(2) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter, including rules for the approval of attorney's fees for representation before the board or upon judicial review as provided for in KRS 346.110.

(3) To hear and determine all matters relating to claims for compensation, and the power to re-investigate or reopen claims without regard to statutes of limitations.

(4) To request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether, and the extent to which, a claimant qualifies for compensation. The statute providing confidentiality for juvenile session of district court records does not apply to proceedings under this chapter.

(5) To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers documentary or other evidence. The powers provided in this subdivision may be delegated by the board to any member or employee thereof. If necessary to carry out any of its powers and duties, the board may petition any circuit court for an order.

(6) To take or cause to be taken affidavits or depositions within or without the state.

(7) To make available for public inspection all board decisions and opinions, rules, written statements of policy

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and interpretations formulated, adopted, or used by it in discharging its functions.

(8) To publicize widely the availability of reparations and information regarding the claims therefor.

346.050 Eligibility for benefits

(1) Except as provided in subsections (2) and (3) of this section, the following persons shall be eligible for awards pursuant to this chapter:

(a) A victim of criminally injurious conduct;
(b) A surviving spouse, parent or child of a victim of criminally injurious conduct who died as a direct result of such conduct;

(c) Any other person dependent for his principal support upon a victim of criminally injurious conduct who died as a direct result of such crime.

(2) A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.

(3) No compensation of any kind shall be awarded when injury occurred while the victim was confined in any state, county, urban county, or city jail, prison or other correctional facility, or any state institution maintained and operated by the department for human resources.

346.060 Application for award

(1) A claim may be filed by a person eligible to receive an award, as provided in KRS 346.050, or, if such person is a minor, by his parent or guardian.

(2) A claim must be filed by the claimant not later than one (1) year after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than one (1) year after the death of the victim.

(3) Claims shall be filed in the office of the board in person or by mail. The board shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and alleging the jurisdiction requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the board.

(4) Upon filing of a claim pursuant to this chapter, the board shall promptly notify the Commonwealth attorney or county attorney of the county wherein the crime is alleged to have occurred. If, within ten (10) days after such notification, such Commonwealth attorney or county attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded and shall so notify such Commonwealth or county attorney and the claimant. When such criminal prosecution has been concluded such Commonwealth or county attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to KRS 346.120.

346.070 Limitation on awards

No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars (\$100) or has lost at least two (2) continuous weeks earning or support. Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based.

HISTORY: 1976 S 58, § 7, eff. 6-19-76

346.080 Filing of claim; investigation; examinations; hearing; decision

(1) A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims arising from the death of an individual as a direct result of a crime shall be considered together by a single board member.

(2) The board member to whom such claim is assigned shall examine the papers filed in support of such claim. The board member shall thereupon cause an investigation to be conducted into the validity of such claim. Such investigation shall include, but not be limited to, an examination of police, court, and official records and reports concerning the crime.

(3) If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the board member may order the victim or claimant to submit to a mental or physical examination by a physician or psychiatrist, and may order an autopsy of a deceased victim. A report upon such examination shall be filed with the board member setting out findings, including results of all tests made, diagnosis, prognosis and other conclusions.

(4) For purposes of this chapter 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.

(5) Claims shall be investigated and determined, 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.

(6) The board member to whom a claim is assigned may decide such claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of such claim. If the board member is unable to decide such claim upon the basis of such papers and such report, he shall order a hearing. At such hearing any relevant evidence, not legally privileged, shall be admissible.

(7) After examining the papers filed in support of such claim and the report of investigation, and after a hearing, if any, the board member to whom such claim was assigned shall make a decision either granting an award pursuant to KRS 346.130 or deny the claim.

(8) The board member making a decision shall file a written report setting forth such decision and his reasons therefor and shall thereupon cause the claimant to be notified and furnish him a copy of such report.

346.090 Review by full board; notice of decision

(1) The claimant may, within thirty (30) days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the board for consideration of such decision by the full board.

(2) Any member of the board may, within thirty (30) days after the filing of such report, make an application in writing to the board for consideration of such decision by the full board.

(3) Upon receipt of an application pursuant to subsections (1) or (2), the board shall review the record and affirm or modify the decision of the board member to whom the claim was assigned. The action of the board in affirming or modifying such decision shall be final. The board shall file with the secretary of the board a

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written report setting forth its decision, and if such decision varies in any respect from the report of the board member to whom the claim was assigned setting forth its reasons for such decision. If the board receives no application pursuant to subsections (1) and (2) of this section the decision of the board member to whom the claim was assigned shall become the final decision of the board.

(4) The board shall promptly notify the claimant and the attorney general of the final decision of the board and furnish each with a copy of the report setting forth such decision.

346.100 Failure to perfect claim; denial

Following the initial filing of a claim, if a claimant or victim does not take such further steps as may be necessary to support or perfect the claim as may be required by the board within thirty (30) days after such requirement is made by the board, the claimant or victim shall be deemed in default. In such case the board shall summarily deny the claim and the claimant or victim shall be forever barred from reasserting the claim. The board may remit such proceedings on good cause shown that the failure to take the steps required by the board was totally and completely beyond the control of the claimant or victim.

346.110 Judicial review

Within thirty (30) days after receipt of the copy of the report containing the final decision of the board, the attorney general or claimant may file a proceeding in the Franklin Circuit Court to review the decision of the board. A copy of the filing and complaint shall be served upon the claimant or the attorney general and the board in the manner provided by the Rules of Civil Procedure. Such proceeding shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The question on review shall be limited to whether the decision of the board is adequately supported by substantial evidence and whether the decision of the board is an abuse of discretion.

346.120 Emergency payment

(1) Notwithstanding the provisions of KRS 346.080, if it appears to the board member to whom a claim is assigned, prior to taking action upon such claim that:

(a) Such claim is one with respect to which an award probably will be made; and

(b) Undue hardship will result to the claimant if immediate payment is not made. Emergency payment under subsection (2) of this section may be made.

(2) Upon such findings under subsection (1) of this section the board member may make an emergency award to the claimant pending a final decision in the case provided that:

(a) The amount of such emergency award shall not exceed five hundred dollars (\$500);

(b) The amount of such emergency award shall be deducted from any final award made to the claimant; and

(c) The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the board.

346.130 Awards; findings; amounts

(1) No award shall be made unless the board or board member, as the case may be, finds that:

(a) Criminally injurious conduct occurred;

(b) Such criminally injurious conduct resulted in personal physical injury to or death of, the victim; and

(c) Police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board for good cause shown, finds the delay to have been justified.

(2) The board upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.

(3) Any award made pursuant to this chapter shall exclude therefrom the initial one hundred dollars (\$100) of losses incurred and shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Provided, however, that any award made pursuant to this chapter to a victim sixty-five (65) years of age or older shall not exclude therefrom the initial one hundred dollars (\$100) of losses incurred.

(4) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter be in an amount equal to the actual loss sustained; provided, however, that no such award shall exceed one hundred fifty dollars (\$150) for each week of lost earnings or support. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct the award shall be apportioned by the board among the claimants.

(5) The board is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include funeral costs, a monument and grave plot. In no event shall an award for funeral expenses exceed twenty-five hundred dollars (\$2,500).

(6) Any award made under this chapter shall not exceed fifteen thousand dollars (\$15,000).

346.140 Reduction of award; determination of victim's contribution; basis for denial of claim

(1) Any award made pursuant to this chapter shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury from the following sources:

(a) From or on behalf of the person who committed the crime;

(b) Under insurance programs mandated by law;

(c) From public funds;

(d) Under any contract of insurance wherein the claimant is the insured or beneficiary; and

(e) As an emergency award pursuant to KRS 346.120.

(2) In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or reject the claim, altogether, in accordance with such determination; provided, however, that the board or board member, as the case may be, may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or

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an attempted crime from occurrence in his presence or to apprehend a person who had committed a crime in his presence or had in fact committed a felony. The board or board members may request that either the county attorney or Commonwealth's attorney or both state whether in their opinion, the victim suffered injuries as the result of a crime and has cooperated with the prosecution and law enforcement authorities. The board or board member shall not be bound by such opinions and recommendations and if needed may order a further investigation of the claim.

(3) The board or board member may consider whether the claimant's injuries were the ordinary and foreseeable result of unlawful and criminal activities in determining the claimant's eligibility for an award. If the board or board member, as the case may be, finds that the claimant will not suffer serious financial hardships, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this chapter to meet such loss of earnings, support or out-of-pocket expenses, the board or board member shall deny an award. In determining such serious financial hardship, the board or board member shall consider all of the financial resources of the claimant. The board shall establish specific standards by rule for determining such serious financial hardships.

346.150 Manner of payment; annual reconsideration

(1) The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

(2) The board shall reconsider at least annually every award being paid in installments. An order or reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud.

346.160 Records of proceedings are public; confidentiality protected

The record of a proceeding before the board or a board member shall be a public record; provided, however, 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 such law or regulation.

HISTORY: 1976 S 58, § 16, eff. 6-19-76

346.165 Contracts regarding crime; money to be paid to board; disposition

(1) Every person contracting with any person or the representative or assignee of any person accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives.

(2) After deducting all sums paid to the victim by the board, the board shall deposit such moneys in its accounts for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime and provided further that such victim, within five (5) years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.

(3) Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five (5) years have elapsed from the board's receipt of such funds and that such person has

not been convicted of said crime and further that no actions are pending against such person in connection with the crime or pursuant to this section, the board shall immediately pay over any such moneys to such person.

(4) Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five-year period provided for in subsection (2) of this section shall not begin to run until the board has received such moneys.

(5) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

(6) The failure of a person to pay moneys to the board in accordance with subsection (1) shall create a debt due and owing to the board from that person and shall constitute a preferential lien to the state which may be collected by the board by civil process.

346.170 Subrogation

(1) No right of action at law against a person who has committed a criminal act for damages as a consequence of such act shall be lost as a consequence of receiving benefits under the provisions of this chapter. In the event any person receiving benefits under this chapter additionally seeks a remedy for damages from the person or persons who have committed the criminal act resulting in damages, then and in that event the board shall be subrogated to and have a lien upon any recovery so made to the extent of the payments made by the state to or on behalf of such person under this chapter.

(2) If compensation is 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 compensation is awarded from a source which is, or, if readily available to the victim or claimant would be, a collateral source.

HISTORY: 1976 S 58, § 17, eff. 6-19-76

346.180 Award constitutes debt owed state; manner of payment

(1) Any payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the state by any person found to have committed such criminal act in either a civil or criminal court proceeding in which he is a party.

(2) The court when placing any convicted person, who owes a debt to the state as a consequence of a criminal act, on probation and conditional discharge as provided in KRS 533.020 may set as a condition of the probation or conditional discharge the payment of the debt to the state. The court also may set the schedule or amounts of payments to be made subject to modification based on change of circumstances.

(3) The parole board shall also have the right to make payment of the debt to the state a condition of parole under the provisions of KRS Chapter 439 subject to modification based on change of circumstances.

346.185 Crime victims' compensation fund; contribution by defendant; other money included in fund; withholding of funds due defendant

(1) There is established in the state treasury the "crime victims' compensation fund," hereinafter referred to as the "fund," to be administered by the crime victims' compensation board. In all cases in which defendants are given a

sentence of imprisonment or are placed under the supervision of the state parole board or have been placed on probation or other form of conditional release, after an adjudication of guilty or after imposition of sentence, whether upon a plea of guilty or after trial, there shall be imposed as an additional cost the sum of ten dollars (\$10.00) for all offenses for which imprisonment may be imposed. The clerk of the court shall collect the cost and forward it monthly to the state treasurer, to be deposited

in the fund. Nothing herein shall be construed to limit the power of the court to order additional forms of restitution including public or charitable work or reparation to the victim, to the fund, or otherwise as authorized by law.

(2) The fund shall consist of moneys from the following: appropriations by the general assembly; the federal government; payments by the defendant pursuant to subsection (1) of this section and any other public or private source. Any unexpended balance remaining in the fund at the end of the biennium shall not lapse and be transferred to the general fund, but shall remain in the crime victims' compensation fund. Any funds not utilized by the board shall be used to provide assistance to programs for victims and the board shall allocate such funds to any agency providing services to victims. In the event there are insufficient funds in the fund to pay all claims in full, all claims shall be paid on a pro rata basis. If there are no moneys in the fund, then no claim shall be paid until moneys have again accumulated. In addition to payment of claims, moneys in the fund shall be used to pay all the necessary and proper expenses of the crime victims' compensation board.

(3) When judgment is entered against a defendant as provided in this section and each sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the state of Kentucky to such defendant an amount equal to the unpaid amount of the judgment. The amount shall be paid to the crime victims' compensation fund and satisfaction of the judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for judgment.

HISTORY: 1982 c 420, eff. 7-15-82

OAG 82-469. The ten dollar cost to be paid by a person convicted of a crime only applies to those crimes where the defendant was ordered imprisoned or was put on probation or obtained a conditional release. The ten dollar cost does not apply where the person is merely fined although the crime authorizes a jail sentence.

346.190 Reciprocal agreements with other states; provisions; effect

(1) The board is empowered to enter into reciprocal agreements with all other states which have established, maintained and funded a state sponsored program for the compensation of crime victims.

(2) The reciprocal agreement shall provide that any Kentucky resident who is a crime victim in the reciprocal state will be entitled to the same benefits and will be subject to the same rules and regulations governing the claim of a resident of the reciprocal state.

(3) Any resident of a reciprocal state who was a crime victim in Kentucky may file a claim with the Kentucky crime victims' compensation board and will be entitled to the same benefits and will be subject to the same rules and regulations governing the claim of a Kentucky resident.

(4) The agreement, entered by and between Kentucky and any reciprocal state, may provide for the cooperation and assistance of investigators in each state in determining the eligibility of a claimant for an award and the amount of the award. The agreement may also provide that if a resident of a reciprocal state has been awarded benefits in Kentucky or a Kentucky resident has been awarded benefits in a reciprocal state, such claimant will not be entitled to an award in his resident state.

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533.030 Conditions; restitution to victim

(1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:

- (a) Avoid injurious or vicious habits;
- (b) Avoid persons or places of disreputable or harmful character;
- (c) Work faithfully at suitable employment as far as possible;
- (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
- (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
- (f) Support his dependents and meet other family responsibilities;
- (g) Pay the cost of the proceeding as set by the court;
- (h) Remain within a specified area;
- (i) Report to the probation officer as directed;
- (j) Permit the probation officer to visit him at his home or elsewhere; and

(k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.

(3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out of pocket losses, or loss of earning as a direct result of the crime, or if as a direct result of the crime the victim incurred medical expenses that were paid by the department for human resources, the crime victim compensation board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work for a public agency of the Commonwealth, a county, or a city for a period of time equal to that determined in the case of working for a victim. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

- (a) Restitution by payment may be ordered in a lump sum or in specified payments;
- (b) Restitution by payment may be ordered paid through the circuit clerk who shall disburse the moneys as ordered by the court;

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(c) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;

(d) Restitution by payment to governmental agencies shall be made through payments to and disbursement by the circuit clerk;

(e) The circuit clerk shall assess an additional fee of two percent (2%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall accrue to the general fund of the state treasury;

(f) When a defendant fails to make restitution ordered to be paid through the circuit clerk, the circuit clerk shall notify the court. The court shall hold a hearing to determine if the defendant is in contempt of the court or has violated the terms of his probation;

(g) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out of pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.

(4) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.

(5) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement pursuant to this provision shall not exceed six months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in custody under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment.

* * *

431.200 Reparation for property stolen or damaged, from person convicted

Any person convicted of a misdemeanor or felony for taking, injuring or destroying property shall restore the property or make reparation in damages if not ordered as a condition of probation. The court in which the conviction is had, if applied to by verified petition made within ninety (90) days of the date the sentence was pronounced, may order restitution or give judgment against the defendant for reparation in damages, and enforce collection by execution or other process. In a petition for restitution or reparation, the court shall cause the defendant, if in custody, to be brought into court, and demand of him if he has any defense to make to the petition. If he consents to the restitution or to reparation in damages in an agreed sum, the court shall give judgment accordingly. Otherwise a jury shall be impaneled to try the facts and ascertain the amount and the value of the property, or assess the damage, as the case may be. A failure to pursue this remedy shall not deprive the person aggrieved of his civil action for the injury sustained.

421.030 Nonresident witness; when expenses allowed

A Commonwealth's witness in a felony case who resides in another state shall be allowed his necessary expenses in addition to the per diem, but no such allowance shall be made unless the judge of the court has made an order based upon the personal knowledge of the circuit judge or upon information showing that the testimony of the witness is material to the state, requiring the attendance of the witness. The expense and per diem shall be allowed by the circuit court and certified to the circuit clerk for payment.

HISTORY: 1964 c 177, § 3, eff. 7-1-64
1942 c 163, § 1, 2; KS 368

CROSS REFERENCES

Persons who are entitled to fees. 81 Am Jur 2d, Witnesses § 25

Contracts to pay witness fees of nonresidents. 81 Am Jur 2d, Witnesses § 27

Uniform Act to secure attendance of witnesses from without a state in criminal proceedings. 44 ALR2d 732

OAG 74-271. A nonresident Commonwealth's witness in a felony case, required to attend such Kentucky circuit court proceeding, should be tendered (paid in advance) ten cents per mile and \$5 per day for each day of travel and attendance; in addition, he should be reimbursed for his motel and food bills on such trip, as an additional item of necessary expense.

1929 OAG 1689. Claim was not valid where the order failed to show that the allowance was made on the personal knowledge of the circuit judge, it did not show that the judge upon his own personal knowledge regarded them as material witnesses to the Commonwealth, and the order was made during term when the witnesses were in McKee, Kentucky, and not "during vacation."

421.040 Fee in felony case must be claimed; when not allowed

Each witness for the Commonwealth in a felony case shall, immediately after he testifies claim his attendance in open court. The claim may be allowed by the court and if it is allowed it shall be noted of record. Any person who has been subpoenaed or recognized as a witness in a felony case who fails to appear upon the calling of the case, is not entitled to claim as a witness in that case unless he files an affidavit from which it appears that he had a good excuse for failing to attend. When the affidavit is filed the court may allow the witness to claim his attendance. The clerk shall note on his order book the name of each witness who fails to attend the first day of the trial.

HISTORY: KS 1737, 1738

98 Ky 4, 32 SW 139 (1894), Com v Comes. Where a criminal prosecution is removed from one county to another under KRS 452.230 (KS 1112), the county from which it is removed shall pay the costs of removal only, and the claim for mileage of a witness residing in the county from which the removal was made, does not constitute a part of the cost of removal, but of the costs of the trial and should be paid out of the state treasury.

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524.040 Intimidating a witness

(1) A person is guilty of intimidating a witness when, by use of a threat directed to a witness or a person he believes may be called as a witness in any official proceeding, he:

(a) Influences, or attempts to influence, the testimony of that person; or

(b) Induces, or attempts to induce, that person to avoid legal process summoning him to testify; or

(c) Induces, or attempts to induce, that person to absent himself from an official proceeding to which he has been legally summoned.

(2) "Threat" as used in this section means any threat proscribed in KRS 514.080.

(3) Intimidating a witness is a Class D felony.

HISTORY: 1974 H 232, § 203, eff. 1-1-75

COMMENTARY (1974)

This provision is designed to apply to the same types of improper influence as are covered by KRS 524.020 (Bribing a witness), but punishes such activity when it involves coercion. Classification of this offense as a Class D felony places such threats on par with bribery of a witness. There is no justification for distinguishing between improperly influencing witnesses by offers of pecuniary gain and by threats of physical harm, property damage, exposure of secrets, etc. See KRS 514.080 defining the term "threat."

The instant provision is obviously not intended to apply to situations such as attorney, and insurance investigators taking statements.

CROSS REFERENCES

See Brickey, Kentucky Criminal Law § 10.09, 14.04(6), 22.02(2), 22.03(2)

524.050 Tampering with a witness

(1) A person is guilty of tampering with a witness when, knowing that a person is or may be called as a witness in an official proceeding, he:

(a) Induces or attempts to induce the witness to absent himself or otherwise avoid appearing or testifying at the official proceeding with intent to influence the outcome thereby; or

(b) Knowingly makes any false statement or practices any fraud or deceit with intent to affect the testimony of the witness.

(2) Tampering with a witness is a Class A misdemeanor.

Chapter 209

PROTECTION OF ADULTS

209.010	Purpose
209.020	Definitions
209.030	Rules and regulations; reports; departmental actions
209.040	Remedies; injunctive relief
209.050	Immunity from civil or criminal liability
209.060	Privileged relationships not ground for excluding evidence

209.080	Title
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209.100	Emergency protective services
209.110	Petition; guardian ad litem; summons; notice; hearing; report to court; fee
209.120	Findings by court; limitations of court's power; termination of order
209.130	Ex parte order of court; implementation
209.140	Confidentiality of information
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SENIOR CITIZEN DISCOUNT PROGRAM

209.400	Legislative intent
209.410	Definitions for KRS 209.400 and 209.420
209.420	Senior citizen discount program for retail goods and services
209.990	Penalties

209.010 Purpose

The purpose of this chapter is:

(1) To provide for the protection of adults who may be suffering from abuse, neglect, or exploitation, and to bring said cases under the purview of the circuit or district court.

(2) To provide that any person who becomes aware of such cases shall report them to a representative of the department, thereby causing the protective services of the state to be brought to bear in an effort to protect the health and welfare of these adults in need of protective services and to prevent abuse, neglect, or exploitation.

HISTORY: 1978 H 501, § 1, eff. 6-17-78
1976 ex s, S 15, § 200; 1976 S 230, § 2

209.020 Definitions

As used in this chapter unless the context otherwise requires:

(1) "Secretary" means the secretary of the department for human resources.

(2) "Department" means the department for human resources.

(3) "Bureau" means the bureau for social services of the department for human resources.

(4) "Adult" means a person, eighteen (18) years of age or older or a married person without regard to age, who because of mental or physical dysfunctioning, or who is the victim of abuse or neglect inflicted by a spouse, is unable to manage his own resources, carry out the activities of daily living, or protect himself from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person to assist him and may be in need of protective services.

(5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include, but are not limited to, conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation.

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tion; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected or exploited and to ensure that he obtains suitable care in or out of his home.

(6) "Caretaker" means an individual or institution who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily, or by contract, or agreement.

(7) "Abuse or neglect" means the infliction of physical pain, injury, or mental injury, or the deprivation of services by a caretaker which are necessary to maintain the health and welfare of an adult, or a situation in which an adult, living alone, is unable to provide or obtain for himself the services which are necessary to

maintain his health or welfare or a situation in which a person inflicts physical pain or injury upon a spouse or deprives a spouse of reasonable services necessary to maintain the health and welfare of his spouse.

(8) "Exploitation" means the improper use of funds by a caretaker which have been paid by a governmental agency to an adult or to the caretaker for the use or care of the adult.

(9) "Investigation" shall include, but is not limited to, a personal interview with the individual reported to be abused, neglected, or exploited. When abuse, or neglect is allegedly cause of death, a coroner's or doctor's report shall be examined as part of the investigation.

(10) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others.

(11) "Emergency protective services" are protective services furnished an adult in an emergency.

(12) "Protective placement" means the transfer of an adult from his present living arrangement to another.

(13) "Court" means the circuit court or the district court if no judge of that circuit court is present in the county.

209.030 Rules and regulations; reports; departmental actions

(1) The secretary may, within his discretion, adopt such rules, regulations, procedures, guidelines, or any other expressions of policy necessary to effect the purpose of this chapter so far as such action is reasonably calculated to serve the public interest. The secretary may take necessary action and may offer or cause to be offered protective services toward safeguarding the welfare of an adult who has experienced abuse or neglect, inflicted or caused by a spouse.

(2) Any person, including, but not limited to, physician, law enforcement officer, nurse, social worker, department personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in accordance with the provisions of this chapter. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.

(3) An oral or written report shall be made immediately to the department upon knowledge of the occurrence of suspected abuse, neglect, or exploitation of an adult. Any person making such a report shall provide

the following information, if known: The name and address of the adult, or of any other person responsible for his care; the age of the adult; the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation; the identity of the perpetrator, if known; the identity of the complainant, if possible; and any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation.

(4) Upon receipt of the report, the department shall take the following action as soon as practical:

- (a) Notify the appropriate law enforcement agency;
- (b) Initiate an investigation of the complaint; and
- (c) Make a written report of the initial findings together with a recommendation for further action, if indicated.

(5) Any representative of the department may enter any health facility or health service licensed by the department at any reasonable time to carry out the department's responsibilities under this chapter. Any representative of the department actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall also be allowed access to the mental and physical health records of the adult which are in the possession of any individual, hospital, or other facility if necessary to complete the investigation mandated by this chapter.

(6) Any representative of the department may with consent of the adult or caretaker enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this chapter. If the adult or caretaker does not consent to the investigation, a search warrant may issue upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the department to proceed with the investigation.

(7) If a determination has been made that protective services are necessary when indicated by the investigation, the department shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.

(8) In the event the adult elects to accept the protective services to be provided by the department, the caretaker shall not interfere with the department when rendering such services.

209.040 Remedies; injunctive relief

Any court may upon proper application by the department issue a restraining order or other injunctive relief to prohibit any violation of this chapter, regardless of the existence of any other remedy at law.

209.050 Immunity from civil or criminal liability

Anyone acting upon reasonable cause in the making of any report or investigation or participating in the filing of a petition to obtain injunctive relief or emergency protective services for an adult pursuant to this chapter, including representatives of the department in the reasonable performance of their duties in good faith, and within the scope of their authority, shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or investigation and such immunity shall apply to those who render protective services in good faith pursuant either to the consent of the adult or to court order.

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209.060 Privileged relationships not ground for excluding evidence

Neither the psychiatrist-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding the abuse, neglect, or exploitation of an adult or the cause thereof in any judicial proceeding resulting from a report pursuant to this chapter.

209.090 Legislative intent

The general assembly of the Commonwealth of Kentucky recognizes that some adults of the Commonwealth are unable to manage their own affairs or to protect themselves from abuse, neglect, or exploitation. Often such persons cannot find others able or willing to render assistance. The general assembly intends, through this chapter, to establish a system of protective services designed to fill this need and to assure their availability to all adults. It is also the intent of the general assembly to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's needs for services, and to require that due process be followed in imposing such restrictions.

HISTORY: 1980 c 372, § 1, eff. 7-15-80

209.100 Emergency protective services

(1) If an adult lacks the capacity to consent to receive protective services in an emergency, these services may be ordered by a court on an emergency basis through an order pursuant to KRS 209.110, provided that:

- (a) The adult is in a state of abuse or neglect and an emergency exists;
- (b) The adult is in need of protective services;
- (c) The adult lacks the capacity to consent or refuse to consent to such services; and
- (d) No person authorized by law or court order to give consent for the adult is available to consent to emergency protective services or such person refuses to give consent.

(2) In ordering emergency protective services, the court shall authorize only that intervention which it finds to be the least restrictive of the individual's liberty and rights while consistent with his welfare and safety.

209.110 Petition; guardian ad litem; summons; notice; hearing; report to court; fee

(1) A petition by the department for emergency protective services shall be verified by an authorized representative of the department and shall set forth the name, age, and address of the adult in need of protective services; the nature of the disability of the adult, if determinable; the proposed protective services; the petitioner's reasonable belief, together with the facts supportive thereof, as to the existence of the facts, and the facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts. The petition and all subsequent court documents shall be entitled: "In the interest of . . . , an adult in need of protective services." The petition shall be filed in the court of the adult's residence, or if filed pursuant to KRS 209.130, the court of the county in which the adult is physically located.

(2) When a petition for emergency protective services is filed, the court or the clerk shall immediately appoint a guardian ad litem to represent the interest of the adult. The duties of a guardian ad litem representing an adult for whom a petition for emergency protective services has been filed shall include personally interviewing the adult, counseling with the adult with respect to this chapter, informing him of his rights and providing competent representation at all proceedings, and such other duties as the court may order.

(3) Following the filing of a petition, a summons shall be issued and served with a copy of the petition, and notice of the time, date and location of the hearing to be held on the petition. Service shall be made upon the adult and his guardian or, if none, his caretaker. Should the adult have no guardian or caretaker, service shall be made upon the adult's guardian ad litem. Notice of the hearing shall be given to the adult's spouse, or, if none, to his adult children or next of kin, unless the court is satisfied that notification would be impractical. Service of the petition shall be made at least three (3) calendar days prior to the hearing for emergency protective services.

(4) The hearing on the petition for an emergency order for protective services shall be heard under the following conditions:

- (a) The hearing on the petition, in the interests of expedition, may be held in any county within the judicial district or circuit served by the court. The court shall give priority to the holdings of the hearings pursuant to petitions filed under this chapter;
 - (b) The adult or his representative may present evidence and cross-examine witnesses; and
 - (c) The adult or his representative may petition the court to have any order which is entered pursuant to this chapter, set aside or modified for good cause.
- (5) Where protective services are rendered on the basis of an order pursuant to this section, the department shall submit a report to the court describing the circumstances including the name, place, date, and nature of the services. Such report shall be made at least once or on a monthly basis if protective services are provided the adult for a period of longer than one (1) month.
- (6) The fee of the guardian ad litem shall be paid by the department not to exceed three hundred dollars (\$300). This fee is not to be paid to attorneys employed by government funded legal services programs.

HISTORY: 1982 c 141, § 66, eff. 7-1-82
1980 c 372, § 6

Legislative Research Commission Note (1982):
A technical correction has been made in this section by the Reviser of Statutes pursuant to KRS 7.136.

209.120 Findings by court; limitations of court's power; termination of order

(1) Upon petition by the department a court may issue an order authorizing the provision of emergency protective services to an adult after a hearing and upon a finding based on a preponderance of the evidence that:

- (a) The adult is in a state of abuse or neglect and is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others;
- (b) The adult is in need of protective services;
- (c) The adult lacks the capacity to consent to such services; and
- (d) No person authorized by law or court order to give consent for the adult is available to consent to protective services or such person refuses to give consent.

(2) In issuing an emergency order the court shall adhere to the following limitations:

- (a) Only such protective services, including medical and surgical care and protective placement, as are necessary to remove the conditions creating the emergency shall be covered, and the court shall specifically designate the approved services in its order. Such designation of approved services shall be deemed to be the consent of the court authorizing the provision of such services.
- (b) Protective services authorized by the court shall not include hospitalization or protective placement unless the court specifically finds such action is necessary and gives specific approval for such action in its order.

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(c) The issuance of an emergency order shall not deprive the adult of any rights except to the extent validly provided for in the order.

(d) To implement an order, the court may authorize forcible entry of the premises of the adult for the purpose of rendering protective services or transporting the adult to another location for the provision of such services. Authorized forcible entry shall be accomplished by a peace officer accompanied by a representative of the department.

(3) If the court finds, pursuant to a hearing, that the adult is in need of protective services, and should that adult have a guardian who has been derelict in providing for the welfare of the adult, the court shall have the discretion to remove the guardian and appoint another guardian, if an individual is available, willing, and able to function as guardian; such removal and appointment shall be in compliance with the provisions of KRS Chapter 387. It is not necessary for the court to find a guardian has been derelict as a requirement for the issuance of an order for protective services.

(4) If the court finds that protective services are no longer needed by the adult, the court shall order the emergency protective services to terminate.

209.130 Ex parte order of court; implementation

(1) When from an affidavit or sworn testimony of an authorized representative of the department, it appears probable that an adult will suffer immediate and irreparable physical injury or death if protective services are not immediately provided, and it appears that the adult is incapable of giving consent, the court may assume jurisdiction and issue an ex parte order providing that certain specific protective services be provided the adult. The court shall not authorize such protective services except those specifically designed to remove the adult from conditions of immediate and irreparable physical injury or death. A copy of the order shall be served upon the adult and his guardian, or if none, his caretaker.

(2) To implement an ex parte order, the court may authorize forcible entry of the premises of the adult for the purpose of rendering protective services or transporting the adult to another location for the provision of such services. Authorized forcible entry shall be accomplished by a peace officer accompanied by a representative of the department.

(3) Upon the issuance of an ex parte order, the department must file a petition as soon as possible. A hearing must be held within seventy-two (72) hours, exclusive of Saturdays and Sundays, from the issuance of an ex parte order.

209.140 Confidentiality of information

All information obtained by the bureau staff or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except: (a) persons suspected of abuse or neglect or exploitation, provided that in such cases names of informants may be withheld, unless ordered by the court; (b) persons within the bureau or department with a legitimate interest or responsibility related to the case; (c) other medical, psychological, or social service agencies, or law enforcement agencies that have a legitimate interest in the case; (d) cases where a court orders release of such information; and (e) the alleged abused or neglected or exploited person.

HISTORY: 1980 c 372, § 10, eff. 7-15-80

209.150 Who may make criminal complaint

Any representative of the department acting officially in that capacity, any person with personal knowledge of the abuse or neglect, or exploitation of an adult by a caretaker, or an adult who has been abused or neglected or exploited shall have standing to make a criminal complaint.

209.160 Spouse abuse shelter fund created; department to administer

There is hereby created a trust and agency account in the state treasury to be known as the spouse abuse shelter fund. Each county clerk shall remit to the fund, by the tenth (10th) of the month, ten dollars (\$10) from each fourteen dollars (\$14) collected during the previous month from the issuance of marriage licenses. The fund shall be administered by the department. The department shall use the funds for the purpose of providing protective shelter services for spouse abuse victims.

Category	Citation
1. Victim Compensation Program	R.S. 46:1801 et seq.
1.1 Responsible Agency	R.S. 46:1803
1.2 Eligible Claimants	R.S. 46:1804; 46:1809(3); 46:1809(5)
1.3 Losses Covered	R.S. 46:1802(8)
1.4 Minimum and Maximum Award	R.S. 46:1809(f); 46:1810
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	R.S. 46:1806(A)
1.7 Filing of Claim - Time Limit	R.S. 46:1806(A)
1.8 Emergency Award	R.S. 46:1813
1.9 Funding	R.S. 46:1816; 15:874 (from inmates accounts)
2. Restitution	
2.1 Sentencing Option	Code of Crim. Proc. Art. 895.1; R.S. 15:571.7(C)(2); 15:574.4(J)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	R.S. 46:1831 et seq.
4. Witness Fees	R.S. 15:252; 15:253
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	R.S. 14:129.1
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	R.S. 1807(B)(2)
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	Code Crim. Proc. Art. 875(B)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	R.S. 15:436.1
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	R.S. 40:2109.1 (hospital procedures)
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	R.S. 46:2131 et seq.
14.2 Domestic Violence Shelters	R.S. 46:2121 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	R.S. 46:1807(C)(5),(E)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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CHAPTER 21. CRIME VICTIMS REPARATIONS

Sec.

- 1801. Short title.
- 1802. Definitions.
- 1803. Crime Victims Reparations Board.
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- 1805. Crimes to which Chapter applies.
- 1806. Application; requirements.
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- 1808. Procedure by the board; public hearings; right to counsel.
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- 1811. Reparation order; terms and conditions.
- 1812. Finality of decision.
- 1813. Emergency awards.
- 1814. Effect of reparations award on right to recover damages in civil action; repayment of award.
- 1815. Recovery from the criminal.
- 1816. Crime Victims Reparations Fund; creation; sources of funds; uses.
- 1817. Law enforcement agency; forms.
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- 1821. Limited liability of the state.
- 1822. Transition.
- 1823. Blank.

A former Chapter 21, consisting of R.S. 46:1801 to 46:1821 under the heading "Compensation for Personal Injury or Death from Criminal Acts," enacted by Acts 1972, No. 721, §§ 1 to 21, was repealed by Acts 1976, No. 535, § 1.

Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

§ 1801. Short title

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

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

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Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

History and Source of Law

Title of Act:

An Act to enact Chapter 21 of Title 46 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 46:1801 through R.S. 46:1823, to enact R.S. 36:159(F), and to enact Chapter 21-A of said Title 46, to be comprised of R.S. 46:1831 through R.S. 46:1839, to amend and reenact R.S. 49:968(B)(3), all in order to enact the Crime Victims Reparations Act; to provide for award and payment of reparations to certain victims of enumerated crimes who have suffered pecuniary loss by reason of personal injury or death; to create and provide for the Crime Victims Reparations Board within the Department of Corrections and its powers, duties, functions, and procedures; to provide eligibility, qualifications and other requirements; to provide with respect to awards, including emergency awards;

to provide for recovery from certain criminals and with respect to monies payable under certain contracts to a person accused or convicted of a crime, including establishment and use of criminal victim's escrow accounts; to limit the liability of the state; to provide for the oversight of the board; to provide for penalties for fraud; to create and provide with respect to the Crime Victims Reparations Fund and the use of moneys in said fund, and for the imposition of costs in certain criminal cases; to place the board herein created within the Department of Corrections and provide for performance and exercise of its powers, duties, functions, and responsibilities in accordance with R.S. 36:802, and otherwise generally and specifically to provide with respect thereto. Acts 1982, No. 250.

Library References

Criminal Law ⇐1220.

C.J.S. Criminal Law § 2007.

Notes of Decisions

1. Prior law

Effective date of Acts 1972, No. 721 (former R.S. 46:1801 et seq.) providing for compensation for pecuniary losses suffered by victims of violent crime was not conditioned upon an appropriation by the legislature to implement the fund from which claims were to be paid nor was it conditioned upon receipt of funds granted by the United States. *Wolf v. State*, App.1977, 346 So.2d 320.

Where cause of action by victim of violent crime against the board of review of the department of employment securi-

ty for compensation for loss suffered in the crime arose during the time that former R.S. 46:1801 et seq. providing for such compensation was in effect, the victim was entitled to a hearing before the board of review and to judgment for the appropriate amount even though the law had since been repealed and even though no funds were ever provided for payment of such judgments. *Id.*

Judgment obtained by victim of violent crime pursuant to R.S. 46:1801 et seq. (repealed) providing for payment of compensation to such victims should not

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have been entered against the State of Louisiana. *Id.*

Where Board of Review of Department of Employment Security had not performed its duties in administering act pertaining to disbursements from criminal victim indemnity fund by processing plaintiff's application for reimbursement from fund, plaintiff was not entitled to judgment ordering State to appropriate money to Board for payment of claim. *Wolf v. State*, App.1975, 325 So.2d 342, appeal after remand 346 So.2d 320.

Where Board of Review of Department of Employment Security had not processed plaintiff's application for reimbursement from criminal victim indemnity fund despite advice from Attorney General to do so and despite statement of its own chairman that it would do so, on application for review plaintiff was entitled to judgment ordering Board to process application, and thus trial court should have remanded case to Board for that purpose rather than awarding judgment for plaintiff on his testimony as to circumstances of alleged mugging and his injuries. *Id.*

§ 1802. Definitions

As used in this Chapter:

(1) "Accessory" includes an accessory after the fact and also a principal, as those terms are defined by the Louisiana Criminal Code.

(2) "Board" means the Crime Victims Reparations Board.

(3) "Child" means an unmarried person under eighteen years of age, and includes a natural child, adopted child, stepchild, illegitimate child, any of the above who is a student not over twenty-three years of age, and a child conceived prior to but born after the personal injury or death of the victim.

(4) "Claimant" means a victim or a dependent of a deceased victim, or the legal representative of either, an intervenor, or in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or the funeral or burial expenses incurred as a direct result of the crime.

(5) "Collateral source" means a source of benefits for pecuniary loss awardable, other than under this Chapter, which the victim has received or which is readily available to him or her from any or all of the following:

(a) The offender under an order of restitution to the claimant imposed by a court as a condition of probation or otherwise.

(b) The United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states.

(c) Social Security, Medicare, and Medicaid.

(d) Workers' compensation.

(e) Wage continuation programs of an employer.

(f) Proceeds of a contract of insurance payable to the victim for pecuniary loss sustained by the victim by reason of the crime.

(g) A contract providing prepaid hospital and other health care services, or benefits for disability.

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(6) "Dependent" means a spouse or any person who is a dependent of a victim within the meaning of Section 152 of the United States Internal Revenue Code (26 USC § 152).

(7) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent a crime covered by this Chapter, to apprehend a person reasonably suspected of having engaged in such a crime, or to aid a police officer, but does not include a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of his or her employment.

(8) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred by reason of personal injury, as a consequence of death, or a catastrophic property loss, and includes:

(a) For personal injury:

(i) Medical, hospital, nursing, or psychiatric care or counseling, and physical therapy.

(ii) Actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury.

(iii) Care of a child or children enabling a victim or the spouse, but not both of them, to engage in gainful employment.

(b) As a consequence of death:

(i) Funeral, burial, or cremation expenses.

(ii) Loss of support to one or more dependents not otherwise compensated for as a pecuniary loss for personal injury.

(iii) Care of a child or children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury.

"Pecuniary loss" does not include loss attributable to pain and suffering.

(c) As to catastrophic property loss, the loss must be so great as to cause overwhelming financial effect on the victim or other claimant and shall be restricted to loss of abode.

(9) "Reparations" means payment of compensation in accordance with the provisions of this Chapter for pecuniary loss resulting from physical injury, death, or catastrophic property loss by reason of a crime enumerated in this Chapter.

(10) "Victim" means a person who is a Louisiana resident at the time a crime covered by this Chapter was committed in this state and who suffers personal injury, death, or catastrophic property loss

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as a result of the crime, and meets the conditions set forth in this Chapter.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

§ 1803. Crime Victims Reparations Board

A. The Crime Victims Reparations Board is created and established in the Department of Corrections. The board shall be domiciled in Baton Rouge.

B. The board shall be composed of the secretary of the Department of Corrections, or his designee, and eight members, who shall be appointed by the governor for terms of four years, except that in making his initial appointments, the governor shall appoint two members to serve for terms of one year each, two for two years, two for three years, and two for four years. Each appointment by the governor shall be submitted to the Senate for confirmation, and beginning in 1984 every appointment confirmed by the Senate shall again be submitted by the governor to the Senate for confirmation every two years after the initial confirmation. At least one member shall be appointed from each of the congressional districts in the state and at least one member shall be a medical doctor licensed to practice in Louisiana and at least one member shall be a lawyer licensed to practice in Louisiana.

C. A vacancy in the membership of the board shall be filled by appointment by the governor for the remainder of the unexpired term.

D. Members shall serve without compensation, but shall be paid a per diem not in excess of seventy-five dollars and shall be reimbursed for travel expenses incurred in attendance at meetings of the board and other expenses incurred on business of the board at its direction.

E. A majority of the members of the board shall constitute a quorum for the transaction of all business.

F. The members of the board shall annually elect from their membership a chairman and a vice chairman.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

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§ 1804. Eligibility to apply for reparations

A person who believes he is a victim of a crime enumerated in R.S. 46:1805, or his legal representative, or in the case of death, a dependent or the legal representative of a dependent, shall be eligible to make application to the board for reparations and shall be eligible for an award of reparations in accordance with the provisions of this Chapter.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

Library References

Criminal Law ¶1220.

C.J.S. Criminal Law § 2007.

Notes of Decisions

1. Prior law

Fact that no funds were available under act pertaining to reimbursement of crime victims did not preclude plaintiff, who had been victim of alleged mug-

ging, from having his claim for reimbursement from criminal victim indemnity fund administratively processed. *Wolf v. State*, App.1975, 325 So.2d 342, appeal after remand 346 So.2d 320.

§ 1805. Crimes to which Chapter applies

A. The crimes to which this Chapter applies and for which the board may make an award and order the payment of reparations for pecuniary loss on account of physical injury, death, or catastrophic property loss resulting therefrom are the following enumerated offenses:

- (1) Criminal homicide of any grade.
- (2) Aggravated or second degree battery.
- (3) Aggravated arson or any arson which results in bodily injury or death.
- (4) Aggravated, forcible, or simple rape.
- (5) Aggravated burglary.
- (6) Armed robbery or simple robbery.

B. For the purposes of this Chapter, a person shall be deemed to have committed a criminal act or omission notwithstanding that by

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reason of age, insanity, drunkenness, or other reason he was legally incapable of committing a crime.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

§ 1806. Application; requirements

A. An application for reparations shall be filed in writing with the board within one year after the date of the personal injury, death, or catastrophic property loss and shall be valid only if the act resulting in the personal injury, death, or catastrophic property loss was reported to the appropriate law enforcement officers within seventy-two hours after the date of the personal injury, death, or catastrophic property loss, or within such longer period as the board determines is justified by the circumstances.

B. Application shall be made on a form prescribed and provided by the board, which shall contain at least the following:

(1) A description of the date, nature, and circumstances of the act or acts resulting in the physical injury, death, or catastrophic property loss, and of the crime, if known.

(2) A complete financial statement, including the cost of medical care or funeral, burial, or cremation expenses, the loss of wages or support, and the extent of the property loss, if any, which the claimant has incurred or will incur and the extent to which the claimant has been indemnified for these expenses from any collateral source.

(3) Where appropriate, a statement indicating the extent of any disability resulting from the injury incurred.

(4) An authorization permitting the board or its representatives to verify the contents of the application.

(5) Such other information as the board may require.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

§ 1807. Powers and duties of board; staff

A. The board shall administer the provisions of this Chapter and shall be responsible, in accordance with this Chapter, for determining all matters pertaining to applications for reparations, investigations, and determinations based upon its findings, the granting or rejecting of claims, and fixing the amounts of such grants or payments and the methods of their payment.

B. In the performance of its powers and duties the board shall:

(1) Prescribe, distribute, and otherwise make available forms for use in making application for reparations.

(2) Prepare and distribute pamphlets, informational materials, and application forms, and otherwise assist in making the residents of the state aware of the provisions of this Chapter.

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(3) Receive, verify, and process applications for reparations.

(4) Hold such hearings, take such testimony, and make such investigations as are necessary with respect to any application received by it.

(5) Make a written decision with respect to each application received by it and order payment of reparations to victims in accordance with this Chapter.

(6) Take such other actions and perform such other functions as are required by this Chapter or necessary to accomplish its purposes.

C. The board also may:

(1) Promulgate rules and regulations necessary to carry out its business or the provisions of this Chapter.

(2) Through its chairman or acting chairman administer oaths or affirmations to persons appearing before it, send for papers, documents, and records, and subpoena witnesses.

(3) Appoint committees, including advisory committees.

(4) Use the services, personnel, facilities, and information, including recommendations, estimates, and statistics, of federal agencies and those of state and local public agencies and private institutions, with or without reimbursement therefor.

(5) Request such information, data, and reports from any federal agency as the board may require and as may be produced consistent with law.

D. The Department of Corrections shall provide the office space and personnel necessary to carry out the functions of the board and effectuate the purposes of this Chapter. In addition, to the extent that funds are appropriated or otherwise available therefor, the board may employ personnel, including experts required in connection with particular applications before it.

E. Upon request of the board, each state agency or institution shall make available, to the greatest practical extent, its services, equipment, personnel, facilities, and information, including recommendations, estimates, and statistics.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

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§ 1808. Procedure by the board; public hearings; right to counsel

A. Upon receipt of one or more applications for reparations resulting from the same crime, the board shall examine the application to determine that it is complete and shall schedule all of such claims for consideration at the same time. If the board determines that a hearing is necessary to a decision in the matter, it shall fix the day, time, and place thereof and shall notify the claimant or claimants and such other persons as have indicated a desire to be present or that the board desires to hear. The notice shall be in writing and shall be mailed by certified mail at least ten days prior to the day fixed for the hearing.

B. Hearings shall be open to the public unless in a particular case the board determines that all or part of the hearing should be closed, taking into consideration the fact that an accused has not been convicted or that a closed hearing is in the best interest of the victim. The applicant may appear and be heard and present evidence on his own behalf or through counsel or legal representative. Any person who has a substantial interest in the proceedings, as determined by the board, may appear before the board and shall have the right to introduce evidence and cross examine witnesses.

C. The members of the board and the attorney representing the board, if any, may question and cross examine witnesses. The board may bring before it physicians or other experts to examine any claimant. The board may receive in evidence any statement, document, information, or matter that it believes may contribute to the purposes of the hearing or to any of its deliberations, whether or not a hearing is held and whether or not any of them would be admissible in court.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

§ 1809. Criteria for making awards; prohibitions; authority to deny or reduce award

A. The board shall order the payment of reparations in an amount determined by it if, with or without hearings, it finds by a preponderance of the evidence that pecuniary loss was sustained by the victim by reason of personal injury, death, or catastrophic property loss proximately caused by a crime enumerated in R.S. 46:1805 and that such pecuniary loss has or will not be compensated from any collateral or other source.

B. In making its determination, the following provisions shall apply:

(1) A finding by the board, for purposes of considering an application for award under this Chapter, that the commission of a crime enumerated in R.S. 46:1805(A) resulted in a pecuniary loss covered by this Chapter shall be a sufficient finding with respect to the crimes giving rise to the application for a reparations award. An order for reparations may be made whether or not any person is ar-

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rested, prosecuted, or convicted of the crime giving rise to the application for reparations. The board may suspend proceedings in the interest of justice if a civil or criminal action arising from such act or omission constituting the crime is pending or imminent.

(2) Conviction of an offender of a crime giving rise to the application for reparations under this Chapter shall be conclusive evidence that the crime was committed.

(3) No award of reparations shall be made if the board finds that:

(a) The crime was not reported within the time specified by R.S. 46:1806(A).

(b) The claimant failed or refused to cooperate substantially with the appropriate law enforcement officials.

(c) The victim is the spouse of or a person living in the same household or maintaining sexual relations with the accused or his accessory or is the parent, child, brother, or sister of the accused or his accessory, unless the board specifically determines that the interests of justice otherwise require in a particular case.

(d) The claimant was the offender or an accessory, or that an award to the claimant would unjustly benefit any of them.

(e) The claim was not filed timely, as provided by R.S. 46:1806(A).

(f) The claim is for a pecuniary loss of less than two hundred fifty dollars.

(g) The crime was committed prior to the effective date of this Chapter.

(4) The board may deny or reduce an award:

(a) If it finds that the behavior of the victim at the time of the crime giving rise to the claim was such that the victim bears some measure of responsibility for the crime that caused the physical injury, death, or catastrophic property loss or for the physical injury, death, or catastrophic property loss.

(b) To the extent that the pecuniary loss is recouped from collateral or other sources.

(5) No reparations of any kind shall be awarded under this Chapter to a victim who is injured or killed while confined in any

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state, parish, or city jail, prison or other correctional facility as a result of a conviction of any crime. However, if, prior to a conviction, the victim was injured or killed while incarcerated, the board may deny reparations if it is subsequently determined that the victim was guilty of the offense which resulted in his incarceration.

§ 1810. Amount of reparations award

Awards payable under this Chapter shall not exceed ten thousand dollars in the aggregate for all claims arising out of the same crime, and no award shall be made for the first two hundred fifty dollars of the pecuniary loss otherwise eligible for reparation payments.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

§ 1811. Reparation order; terms and conditions

A. The board may order the payment of an award in a lump sum or in installments. That part of an award equal to the amount of the pecuniary loss accrued to the date of the award shall be paid in a lump sum. In all other respects the board shall determine all matters respecting the payment of awards, consistent with the provisions of this Chapter.

B. The board shall deduct from any payments it orders any amounts received by the claimant from any collateral source.

C. The state treasurer shall pay to the person named in the order of payment of reparations the amount named therein in accordance with the provisions of such order.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

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§ 1812. Finality of decision

A decision or order of the board with respect to any application or claim for reparations shall be subject to review in accordance with the provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

§ 1813. Emergency awards

A. If it appears to the board prior to its taking action on a claim that an award likely will be made and that undue hardship will result to the claimant if no immediate economic relief is provided, the board may make an emergency award to the claimant pending its final decision in the case. The amount of an emergency award shall not exceed five hundred dollars.

B. The amount of any emergency award shall be deducted from any final award made to the claimant receiving the emergency award. The claimant shall repay to the board the excess of the emergency award over the final award, or the full amount if no final award is made. However, the board may waive all or part of the repayment if in its judgment repayment would cause severe financial hardship.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

§ 1814. Effect of reparations award on right to recover damages in civil action; repayment of award

A. An order for reparations payments under this Chapter shall not affect the right of any person to institute a civil suit to recover damages for the personal injury, death, or catastrophic property loss from any other person. However, if damages in a civil action are recovered, the person shall reimburse the Crime Victims Reparations Fund, through the board, in an amount equal to the amount of the

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reparations award or such lesser amount as is recovered in damages in the civil action.

B. When any person who has received an award from the board files a civil action to recover damages, he shall, at the time of the filing of the suit, notify the board and the attorney general.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

§ 1815. Recovery from the criminal

A. Whenever any person is convicted of a crime and an order for the payment of reparations is or has been made under this Chapter for a personal injury, death, or catastrophic property loss resulting from the act or omission constituting the crime for which conviction was had, the attorney general, within one year after the date on which the judgment of conviction becomes final, may institute a civil action against the convicted person for the recovery of all or any part of the reparations payment. The suit shall be instituted in the district court having jurisdiction in the parish in which such person resides or is found or, in Orleans Parish, in the civil district court for that parish. The court shall have jurisdiction to hear, determine, and render judgment in any such action. Any amount recovered under this Subsection shall be deposited in the state treasury and, after meeting the requirements of Article VII, Section 9 of the Constitution of Louisiana, credited to the Crime Victims Reparations Fund hereinafter created. If an amount greater than that paid pursuant to the order for payment of reparations is recovered and collected in any such action, the board shall pay the balance to the claimant.

B. The board shall provide the attorney general with such information, data, and reports as he may require to institute actions in accordance with this Section.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

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§ 1816. Crime Victims Reparations Fund; creation; sources of funds; uses

A. The Crime Victims Reparations Fund, hereinafter referred to as "the fund," is hereby created in the state treasury.

B. The fund shall be composed of:

- (1) Monies derived from appropriations by the legislature.
- (2) All monies paid as a cost levied on criminal actions, as provided by R.S. 46:1816(D).¹
- (3) Any federal monies made available to the state for victim compensation.
- (4) All monies received from any action to recover damages for a crime which was the basis of a reparations award under this Chapter.
- (5) Any restitution paid by an offender to a victim for damages for a crime which was the basis of a reparations award under this Chapter.
- (6) Any monies paid into the fund from a criminal victim's escrow account, as provided by Chapter 21-A of this Title.

C. All monies deposited in the fund shall be used solely to pay reparation awards to victims pursuant to this Chapter and disbursements therefrom shall be made by the state treasurer upon written order of the board, signed by the chairman, or a court.

D. (1) In addition to any other costs otherwise imposed by law, a cost of fifty dollars for felonies and seven dollars fifty cents for violations of misdemeanors and municipal and parish ordinances is hereby levied in each criminal action, except traffic violations other than those driving offenses defined in Title 14 of the Louisiana Revised Statutes of 1950, which results in a conviction. These costs shall be paid by the defendant and these payments shall be the first obligation of a defendant in the order of priority for payments required of a defendant. The recipient of the costs shall remit all costs so collected to the Department of Corrections on or before the first and the fifteenth day of each calendar month to be deposited in the state treasurer's account for credit to the Crime Victims Reparations Fund, after meeting the requirements of Article VII, Section 9 of the Constitution of Louisiana.

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(2) Notwithstanding the provisions of R.S. 46:1816(C), monies deposited in the Crime Victims Reparations Fund may be used to pay reasonable costs of administering this Chapter. Disbursement of funds to pay such costs shall be made only on written authorization of the chairman or vice chairman of the board.

§ 1817. Law enforcement agency; forms

A. Each law enforcement agency in the state shall keep application forms prepared and provided by the board and make them available to any person upon request.

B. The board may contact any law enforcement agency to determine if an applicant has cooperated with that agency in the identification, apprehension, and conviction of the perpetrator of the crime. Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

Repeal

Section 5 of Acts 1982, No. 250, provides:

"The provisions of this Act creating Chapter 21 of Title 46 are repealed on September 1, 1984."

History and Source of Law

This section, enacted as R.S. 46:1818 nated as R.S. 46:1822 on authority of by Acts 1982, No. 250, § 1, was redesignated as R.S. 24:253.

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

§ 1818. Report to legislature and governor

The board shall submit an annual written report to the legislature and the governor detailing its activities during the preceding year.

§ 1819. Penalty for fraud

No person shall procure or counsel another person to procure reparations under the provisions of this Chapter by any fraud. The penalty for the violation of the provisions of this Section shall be a fine of not more than five hundred dollars or imprisonment for not more than one year, or both.

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§ 1820. Attorney fees

As part of an order resulting from a hearing, the board shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid from the fund in accordance with rules adopted by the board. Additional attorney's fees may be awarded by a court in the event of a review by the court in which the claimant prevails. 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 compensation is awarded. In no event shall an award of attorney's fees be in excess of a rate of fifty dollars per hour.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

§ 1821. Limited liability of the state

The state shall not be liable for the claim of any applicant in excess of the funds appropriated for the payment of claims under this Chapter.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

§ 1822. Transition

No person shall file nor shall the board receive any application for reparations under the provisions of this Chapter prior to January 1, 1983.

Added by Acts 1982, No. 250, § 1, eff. July 17, 1982.

* * *

APPROPRIATIONS—CRIME VICTIMS
REPARATIONS BOARD

ACT NO. 38

HOUSE BILL NO. 104

AN ACT

To appropriate the sum of Two Hundred Fifty Thousand and No/100

(\$250,000.00) Dollars out of the Crime Victims Reparations Fund for the Fiscal Year 1982-1983 to the Crime Victims Reparations Board to be used to pay victims reparation awards.

Be it enacted by the Legislature of Louisiana:

Section 1. To the extent of the fund deposited, the sum of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars is hereby appropriated

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out of the Crime Victims Reparations Fund for the Fiscal Year 1982-1983 to the Crime Victims Reparations Board to be used in accordance with R.S. 46:1816.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana.

CRIME VICTIMS REPARATIONS FUND—ASSESSMENT
OF COSTS FOR FELONY CONVICTION

ACT NO. 159

HOUSE BILL NO. 463

AN ACT

To amend and reenact R.S. 46:1816(D)(1), relative to victim reparation, to provide for the assessment of costs for a felony conviction for the victim reparations fund, and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 46:1816(D)(1) is hereby amended and reenacted to read as follows:

§1816. Crime Victims Reparations Fund; creation; sources of funds; uses

* * *

D.(1) In addition to any other costs otherwise imposed by law, a cost of one hundred dollars for felonies and seven dollars fifty cents for misdemeanors and violations of municipal and parish ordinances is hereby levied in each criminal action, except traffic violations other than those driving offenses defined in Title 14 of the Louisiana Revised Statutes of 1950, which results in a

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conviction. These costs shall be paid by the defendant and these payments shall be the first obligation of a defendant in the order of priority for payments required of a defendant. The recipient of the costs shall remit all costs so collected to the Department of Corrections on or before the first and the fifteenth day of each calendar month to be deposited in the state treasurer's account for credit to the Crime Victims Reparations Fund, after meeting the requirements of Article VII, Section 9 of the Constitution of Louisiana.

* * *

Approved June 24, 1983.

**CRIME VICTIMS REPARATIONS—NOTIFICATION
TO POTENTIAL APPLICANTS**

ACT NO. 160

HOUSE BILL NO. 464

AN ACT

To amend and reenact R.S. 46:1817, relative to crime victims reparations, to delete provisions relative to law enforcement agencies keeping application forms, to provide for the placing of posters in hospitals, to provide that law enforcement officers inform victims of the provisions relative to such reparations and provide application forms to victims seeking assistance, to provide with respect to actions for noncompliance, and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 46:1817 is hereby amended and reenacted to read as follows:

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§1817. Notification to potential applicants

A. Every hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this Chapter. The board shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this Chapter to each hospital.

B. Every state and local law enforcement agency shall inform victims of criminally injurious conduct of the provisions of this Chapter and provide application forms to victims who desire to seek assistance. The board shall provide application forms and all other documents that local law enforcement agencies may require to comply with this Section.

C. The failure of any hospital, law enforcement agency, or agent or employee thereof to comply with the requirements of this Section shall not give rise to a cause of action by any person against such hospital, law enforcement agency or agent or employee thereof; nor shall such failure in any way affect the time limitations provided for in this Chapter.

Approved June 24, 1983.

**CRIME VICTIM REPARATIONS—MINIMUM LOSS
FOR PERSONS OF CERTAIN AGES**

ACT NO. 161

HOUSE BILL NO. 465

AN ACT

To amend and reenact R.S. 46:1810, relative to the Crime Victim Reparations Act, to provide for a minimum loss for persons of certain ages applying for reparations, and otherwise to provide with respect thereto.

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§ 874. Compensation account

The inmate's compensation account shall be handled and accounted for as follows:

(6) Upon the presentation to the Department of Corrections of a court order or a certified copy of an extract of the minutes of a court proceeding showing that an inmate was convicted and was assessed court costs, along with a letter from the sheriff itemizing the costs assessed and verifying which of the costs were not paid, the department shall withdraw funds from any of the inmate's accounts for the payment of the court costs due. All funds so collected shall be forwarded to the court that assessed the costs; however, if the inmate has not paid the costs assessed in accordance with Crime Victims Reparations Act, R.S. 46:1801, et seq., those costs shall be collected and shall be credited directly to the Crime Victims Reparations Fund, R.S. 46:1816, after all other costs are paid. The department shall notify the court if the costs for the Crime Victims Reparations Fund have been collected. The funds in an inmate's accounts shall not be reduced by more than seventy-five percent in accordance with this Section.

Added by Acts 1983, No. 163, § 1.

* * *

§ 571.7. Supervision upon release from parish prison after diminution of sentence for good behavior; conditions of release; revocation

A. When a prisoner who has been sentenced to a parish prison in a parish having a population in excess of five hundred thousand people is released because of diminution of sentence pursuant to this Part, he shall be released as if released on parole.

C. The supervisor may make rules for the conduct of a prisoner while he is on release and may also require, either at the time of release or at any time while on release, that the prisoner conform to any of the following conditions:

(1) Residence in a community rehabilitation center.

(2) Restitution to a victim of the crime for which release is being sought, if such victim has suffered a direct pecuniary loss as a result of the crime. The supervisor shall take into account the prisoner's ability to pay and shall not revoke release based upon this condition unless the prisoner has willfully failed to comply.

(3) Community service work, as determined by the supervisor.

(4) Payment into a victim compensation fund, if such fund is established, in a manner and amount specified by law.

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§ 574.4. Parole; eligibility for consideration; consideration and hearings; decisions of board; nature of parole; order of parole; conditions of parole; rules of conduct

A. A person convicted of a felony and sentenced to imprisonment in any penal or correctional institution in this state shall be eligible for parole consideration upon serving one-third of the sentence imposed; except that a parole may be granted to a first offender who has been sentenced to less than five years in prison and who has never previously been convicted of a felony in this or any other state or country without requiring that the offender shall have served the required one-third of his sentence, provided that the sentencing judge shall be notified at least ten days in advance of the parole hearing where the offender has served less than one-third of his sentence. For purpose of this subsection, a person who has been convicted of a felony and has thereafter been pardoned shall not be considered a first offender.

J. When a victim of the crime for which parole is being considered has suffered a direct pecuniary loss, the parole board may impose as a condition of parole that restitutions to the victim be made. When such a condition is imposed the board shall take into account the defendant's ability to pay and shall not revoke parole based upon this condition unless the parolee has willfully failed to comply.

Nothing herein shall affect a victim's civil remedy except that funds actually received shall be credited to any civil judgment arising out of the same offense.

Acts 1968, No. 191, § 1. Amended by Acts 1970, No. 448, § 1; Acts 1972,

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Louisiana Code of Criminal Procedure

Act 13

1983 REGULAR SESSION

Section 1. Code of Criminal Procedure Article 895.1 is hereby amended and reenacted to read as follows:

Art. 895.1. Probation; restitution

A. When a court suspends the imposition or the execution of a sentence and places the defendant on probation, it may in its discretion, as a condition of probation, order the payment by the defendant to the victim or his assigns of restitution for any loss or inconvenience which the victim may have suffered. The payment shall be made, in the discretion of the court, either in a lump sum or in monthly installments based on the earning capacity and assets of the defendant.

When a court suspends the imposition or the execution of a sentence and places the defendant on probation, it may in its discretion, order placed, as a condition of probation, an amount of money to be paid by the defendant to any or all of the following:

- (1) To the indigent defender program for that court.
- (2) To the criminal court fund to defray the costs of operation of that court.
- (3) To the sheriff and clerk of court for costs incurred.
- (4) In felony cases involving the distribution of or intent to distribute controlled dangerous substances, to a law enforcement agency for the reasonable costs incurred in arresting the defendant.

Approved June 9, 1983.

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Louisiana Revised Statutes Annotated

CHAPTER 21-A. CRIMINAL VICTIM'S ESCROW ACCOUNT

Sec.

1831. Definitions.
1832. Escrow account; establishment.
1833. Victim's notice of intent to file a claim.
1834. Notice to victims.
1835. Release of escrow account.
1836. Payments from escrow account for legal representation.
1837. Prorated payments on basis of judgments.
1838. Incapacity of accused person; determination of funds in account.
1839. Void actions.

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

§ 1831. Definitions

As used in this Chapter:

(1) "Account" and "escrow account" mean a criminal victim's escrow account as authorized herein.

(2) "Crime" means any crime for which reparations awards may be made under the provisions of Chapter 21¹ of Title 46, particularly as enumerated in R.S. 46:1805(A).

(3) "Victim" means a person who is a Louisiana resident at the time of the crime and who suffers personal injury, death, or catastrophic property damage, as provided in Chapter 21¹ of this Title 46 of the Louisiana Revised Statutes, as a result of the crime or is a dependent of a deceased victim, but does not include any person prohibited by said Chapter 21¹ from eligibility to be paid a reparations award.

(4) "Dependent" means a spouse or other person who is or was a dependent, within the meaning of Section 152 of the United States Internal Revenue Code (26 USC § 152), of a victim.

Added by Acts 1982, No. 250, § 4, eff. July 17, 1982.

¹ In pars. (2) and (3), "Chapter 21" was substituted for "Chapter 20" on authority of R.S. 24:253.

§ 1832. Escrow account; establishment

A. Every person, firm, corporation, partnership, association, or other legal entity which contracts with any person or the agent, assignee, or representative of any person accused or convicted of a crime in this state with respect to the reenactment of such crime by way of a movie, book, magazine article, tape recording, phonograph

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record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime, shall file a copy of the contract with the state treasurer and shall pay over to the treasurer, commencing with the date of the first payment under the contract, any money which otherwise, by terms of the contract, would be owing or payable to the person accused or convicted or to his agent, assignee, or representatives.

If the contracting party fails to meet the obligation of payment as required herein, the treasurer, through the attorney general, shall bring a civil action in a court of competent jurisdiction to enforce payment of the funds.

B. Within seven days after receipt of monies under this Section, the treasurer shall establish an escrow account in the name of the person convicted or accused of crime and deposit said monies in said account. Seventy-five percent of the monies in the account shall be for the benefit of and payable to any victim of crimes committed by such person and the remaining twenty-five percent thereof shall be for the benefit of and payable to any crime victim reparations fund in the state treasury, if the person is eventually convicted, found not guilty by reason of insanity, or enters a plea of guilty or nolo contendere¹ as authorized by law and the victim, within the applicable time limits provided by law, brings a civil action in a court of competent jurisdiction and obtains a money judgment against such person or his representative.

C. A victim who meets the provisions of this Chapter shall be entitled, subject to the limitations contained in this Chapter, to an amount from the appropriate escrow account equal to the unsatisfied portion of the civil judgment obtained by the victim against the criminal.

Added by Acts 1982, No. 250, § 4, eff. July 17, 1982.

¹In subsec. B, "contendere" was substituted for "contendre" on authority of R.S. 24:253.

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

§ 1833. Victim's notice of intent to file a claim

A victim of a crime committed by a person in whose name an escrow account is established must register a notice of intent to file a claim against such escrow account pursuant to a judgment, a pending lawsuit, or a prospective lawsuit, with the treasurer within one year after establishment of the escrow account. A failure to comply with this requirement shall forfeit the rights of the victim in the escrow account as against other victims, but shall not bar a claim against the

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escrow account filed within two years of the establishment of such account. No payments to victims shall be made until the time limit for filing a notice has expired or it is established that all of the victims have filed their notices, whichever is sooner.

Added by Acts 1982, No. 250, § 4, eff. July 17, 1982.

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

§ 1834. Notice to victims

The treasurer shall notify any person who has registered with the treasurer as a victim of a crime at the time the treasurer receives such escrow monies for that individual. In addition, at least once every six months for two years after the date on which the treasurer receives such escrow monies, the treasurer shall cause a notice to be published in the official state journal informing victims that such escrow monies are available to satisfy judgments pursuant to this Chapter.

Added by Acts 1982, No. 250, § 4, eff. July 17, 1982.

* * *

§ 1835. Release of escrow account

A. The treasurer shall immediately pay over any monies in an escrow account to a person in whose name an escrow account was established upon dismissal or acquittal of the charges, which arose from the same circumstances which gave rise to the establishment of the escrow¹ account, against such person.

B. Upon a showing that three years have elapsed after the establishment of the escrow account and that no civil actions are pending or registered as provided in R.S. 46:1833, the treasurer shall immediately transfer all monies in and accruing to the escrow account to any crime victim reparations fund in the state treasury.

Added by Acts 1982, No. 250, § 4, eff. July 17, 1982.

¹In subsec. A, "escrow" was substituted for "esrow" on authority of R.S. 24:253.

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§ 1836. Payments from escrow account for legal representation

A. Notwithstanding any other provision of this Chapter, the treasurer, upon order of a court of competent jurisdiction, may make payments from an escrow account to the person in whose name it is established for the sole purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process.

B. Prior to issuing any order to the treasurer for payments for the retaining of legal representation, as permitted by Subsection A of this Section, the court shall determine that the amount of the payment is fair and reasonable.

Added by Acts 1982, No. 250, § 4, eff. July 17, 1982.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

§ 1837. Prorated payments on basis of judgments

A. When any victim has timely presented a notice of intent to file a claim pursuant to a pending or prospective lawsuit, no monies shall be paid from the escrow account until the victim has obtained a final judgment or it has been determined that the pending or prospective lawsuit has been abandoned. This provision shall not affect the payment from the escrow account of those amounts payable to a crime victim reparations fund or affect the right to payments provided for in R.S. 46:1836.

B. When an escrow account contains insufficient funds to meet all judgments presented by victims or their representatives, the monies in the escrow account shall be prorated among the victims or their representatives on the basis of the amounts of the unsatisfied judgments or partially satisfied judgments. The treasurer, through the attorney general, may bring a civil action in a court of competent jurisdiction to determine the payment amount to the victims out of the account. The victims or their legal representatives shall be included as parties in such action.

Added by Acts 1982, No. 250, § 4, eff. July 17, 1982.

§ 1838. Incapacity of accused person; determination of funds in account

Whenever a person accused of crime for whom funds have been deposited into an escrow account is adjudged unfit to proceed to trial by reason of mental incapacity to understand the proceedings against him or to assist in his own defense, the treasurer, through the attorney general, may bring a civil action in a court of competent jurisdiction to determine disposition of the account, if disposition cannot otherwise reasonably be made.

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§ 1839. Void actions

Any action taken by a person accused or convicted of a crime, or by a person or legal entity with whom such person contracts as set forth in R.S. 46:1832, whether by way of execution of the contract or agreement outside of Louisiana, execution of a power of attorney, donation, creation of a corporation or other legal entity, or otherwise, to defeat the purposes of this Chapter shall be null and void as against the public policy of this state. The treasurer, through the attorney general, may bring a civil action in a court of competent jurisdiction to have any such action declared unenforceable and to obtain a judgment ordering such funds to be paid into the escrow account pursuant to this Chapter.

Added by Acts 1982, No. 250, § 4, eff. July 17, 1982.

* * *

§ 252. Witnesses' fees and mileage

Witnesses subpoenaed in all preliminary criminal trials or proceedings, for attendance before grand juries and upon final trials shall receive a per diem of three dollars per day and mileage of not more than five cents for each mile necessarily traveled in going to and returning from court, the exact amount to be fixed by the police juries of the several parishes, provided, however, that in the parishes of Acadia and Vermilion witnesses shall not be allowed any fees, per diem or mileage in all preliminary criminal trials or proceedings and for attendance before grand juries, provided further, however, that witnesses subpoenaed in the parishes of Acadia and Vermilion upon final trials shall receive a per diem of three dollars per day and mileage of not more than five cents for each mile necessarily travelled in going to and returning from court, the exact amount to be fixed by the police juries of the parishes of Acadia and Vermilion.

Acts 1966, No. 311, § 2, eff. Jan. 1, 1967. Amended by Acts 1969, No. 167, § 1.

§ 253. Witnesses not residents of parish

Witnesses who are summoned to testify in prosecutions pending in other parishes than those in which they reside, shall receive a compensation of five cents for every mile they may necessarily travel in going and returning, and five dollars for every day they may be necessarily in attendance upon the court.

Acts 1966, No. 311, § 2, eff. Jan. 1, 1967.

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Louisiana Code of Criminal Procedure

§ 129.1. Intimidating, impeding or injuring witnesses; injuring officers; penalties

No person shall intentionally:

(a) Intimidate or impede, by threat of force or force, or attempt to intimidate or impede, by threat of force or force, a witness with intent to influence this testimony, his reporting of criminal conduct or his appearance at a judicial proceeding;

(b) Injure or attempt to injure a witness in his person or property with intent to influence his testimony, his reporting of criminal conduct or his appearance at a judicial proceeding; or

(c) Injure or attempt to injure an officer of a court of this state in his person or property because of the performance of his duties as an officer of a court of this state or with intent to influence the performance of his duties as an officer of a court of this state.

For purposes of this Section a "witness" is a person (a) who is a victim of conduct defined as a crime under the laws of this state, another state or the United States, or (b) whose declaration under oath has been received in evidence in any court of this state, another state or the United States, or (c) who has reported a crime to a peace officer, prosecutor, probation or parole officer, correctional officer or judicial officer of this state, another state or the United States, or (d) who has been served with a subpoena issued under authority of any court of this state, another state or the United States.

A witness also shall include a person who reasonably would be believed by an offender to be a witness as previously defined in this Section.

Whoever violates the provisions of this Section shall be fined not more than five thousand dollars, imprisoned, with or without hard labor, for not more than five years, or both.

* * *

Art. 875. Presentence investigation; juvenile records

A. (1) If a defendant is convicted of an offense other than a capital offense, the court may order the Department of Corrections, division of probation and parole, to make a presentence investigation. All such reports shall be made within sixty days of conviction except that when the defendant is released on bond pending imposition of sentence, such reports shall be made within ninety days of conviction. In making the investigation, the probation officer shall inquire into the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, his family situation and background, economic and employment status, education and personal habits.

(2) The probation officer shall also indicate specifically those resources available in the community which could provide needed assistance to the defendant should he be released on probation and shall inquire into other matters deemed relevant by the officer or ordered investigated by the court. The court may postpone imposition of sentence until the report is received.

(3) Local and state law enforcement agencies and mental and correctional institutions shall furnish to the probation officer criminal records and such other information and data as the probation officer requests. The court may order a physical and mental examination of the defendant.

B. If a defendant is convicted or pleads guilty to an offense involving a victim, the court shall require that a victim impact statement be included in the presentence report. The victim impact statement shall include factual information as to whether the victim or his family has suffered, as a result of the offense, any monetary loss, medical expense, physical impairment, and any other information deemed relevant. The district attorney may also file a victim impact statement with the court.

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Louisiana Revised Statutes Annotated

§ 436.1. Photographs of objects of theft; affidavit of value and ownership; notice to defendant

A. A photograph of property alleged to be the object of a theft, otherwise admissible, may be admitted as evidence without regard to the availability of the property itself.

B. An affidavit of the value and ownership of property which is alleged to be the object of a theft shall be admissible in evidence under the following circumstances:

(1) The affidavit shall be upon personal knowledge and shall state the basis for such knowledge;

(2) The affidavit shall be paraphrased for identification with the photograph taken pursuant to Subsection A, and

(3) The state shall give written notice of its intent to introduce the affidavit, along with a copy of the affidavit and photograph, not less than ten days prior to commencement of the trial.

C. An affidavit admitted pursuant to Subsection B shall be deemed prima facie evidence of the value and ownership of the property alleged to be the object of a theft. Provided, however, that if the defendant files a written objection to the admission of the affidavit within three days prior to the commencement of trial, the affidavit shall not be admissible and shall not be deemed to be prima facie evidence of the value and ownership of the property.

Added by Acts 1978, No. 243, § 1.

* * *

§ 2109.1. Procedures for rape victims; emergency rooms of licensed hospitals

A. All licensed hospitals in Louisiana shall adhere to the following procedures in the event that a person, male or female, presents himself or is presented at the hospital for treatment as a victim of rape, attempted rape, carnal knowledge, or crime against nature:

(1) The victim shall make the decision of whether or not the incident will be reported to law enforcement officials. No hospital may require the person to report the incident in order to receive medical attention.

(2) If the victim does not wish to report the incident to law enforcement officials, the victim shall be examined and treated as a regular emergency room patient. Any injuries requiring medical attention shall be treated in the standard manner. Tests and treatments exclusive to a rape victim shall be explained to the patient, along with the costs for such tests. The patient shall decide whether or not such tests shall be conducted. Any examination and treatment shall include the preservation, in strict confidentiality, for a

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period of thirty days from the time the victim is presented for treatment, of tests or procedures, or both, and samples that may serve as potential evidence. The patient shall be informed of the length of time for which the specimens will be preserved. If the victim does not wish to report the incident to law enforcement authorities, the hospital's responsibilities, beyond medical treatment, shall be limited to the collection of tests, procedures, or samples that may serve as potential evidence. Any evidence so collected shall then be assigned a code number and the hospital shall maintain code records for a period of thirty days from the date the victim is presented for treatment, said code records to be used for identification should the victim later choose to report the incident. Once a code number has been assigned, custody of such evidence shall be transferred to the local law enforcement agency having jurisdiction in the parish in which the hospital is located, and responsibility for the custody of such evidence shall belong to that law enforcement agency. The hospital shall coordinate the transfer of such evidence with the local law enforcement agency in a manner designed to protect its evidentiary integrity. Evidence which is transferred to the custody of the appropriate law enforcement agency shall bear only the code number assigned by the hospital.

(3) If the victim wishes to report the incident to law enforcement officials, the hospital staff shall contact the appropriate law enforcement agency. After the incident has been reported, the victim shall be examined and treated as a regular emergency room patient, any injuries requiring medical attention will be treated in the standard manner, and specimens shall be kept for evidence. Such evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

(4) Notwithstanding any other provisions of this Section, if any person sixteen years old or younger presents himself or is presented at a licensed hospital for treatment as a victim of any of the alleged crimes listed in this Section, the hospital staff shall immediately notify the appropriate law enforcement official.

(5) Notwithstanding any other provisions of this Section if the victim is physically or mentally incapable of making an intelligent decision, the hospital staff shall immediately notify the appropriate law enforcement officials.

B. These procedures shall constitute minimum standards for the operation and maintenance of hospitals under the provisions of this Part and failure to comply with such standards shall constitute grounds for denial, suspension, or revocation of license under provisions of this Part.

C. When a licensed hospital fails to examine and treat a person, male or female, who has presented himself or herself or who has been presented as a victim of rape, attempted rape, carnal knowledge, or crime against nature, the coroner of the parish shall examine the alleged victim and, if necessary, make arrangements for the treatment of the victim, notwithstanding the provisions of R.S. 33:1625(C). No coroner shall refuse to examine and assist an alleged victim on the grounds the alleged offense occurred outside of or the victim is not a resident of the jurisdiction, provided the crime is reported or assistance is sought as soon as practicable. Nothing in this Subsection shall relieve a licensed hospital of its obligations under Subsections A and B hereof.

Added by Acts 1979, No. 716, § 3. Amended by Acts 1981, No. 573, § 1.

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CHAPTER 28. PROTECTION FROM FAMILY VIOLENCE ACT

PART I. FAMILY VIOLENCE SHELTERS

Sec.

- 2121. Statement of purpose.
- 2122. Program creation; duties of secretary.
- 2123. Program functions; duties of the designate of the secretary.
- 2124. Community shelters; funding; services.
- 2125. Evaluation; reports.

PART II. DOMESTIC ABUSE ASSISTANCE

- 2131. Purposes.
- 2132. Definitions.
- 2133. Jurisdiction; venue; standing.
- 2134. Petition.
- 2135. Temporary restraining order.
- 2136. Protective orders; content; modification; service.
- 2137. Penalties; notice of penalty in order.
- 2138. Assistance of clerk of court.
- 2139. Other relief not affected.

Another Chapter 28, enacted by Acts 1979, No. 785, § 1 to contain R.S. 46:2200 to 46:2206 and relating to transportation aid for the elderly and handicapped, has been redesignated as Chapter 29 on authority of R.S. 24:253.

PART I. FAMILY VIOLENCE SHELTERS

Acts 1982, No. 782, § 1 designated R.S. 46:2121 to 46:2125, which previously comprised Chapter 28 of Title 46 of the Louisiana Revised Statutes of 1950, as Part I of said Chapter 28, "Family Violence Shelters".

§ 2121. Statement of purpose

A. The legislature hereby finds and declares that there is a present and growing need to develop innovative strategies and services which will reduce and treat the trauma of family violence. Available studies documenting police statistics indicate that thousands of persons in this state are regularly beaten, tortured, and, in many cases, killed by spouses or persons with whom they are living in a primary relationship. These studies further indicate that vic-

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tims of family violence come from all socioeconomic classes and ethnic groups, though it is the poor who suffer most from family violence, since it is less likely that they have immediate access to private counseling and shelter for themselves and their children. Children, though often not physically assaulted, suffer deep and lasting emotional effects, and it is most often the children of those parents who commit family violence that perpetuate the cycle by abusing their spouses.

B. The legislature further finds and declares that there is a high incidence of deaths and injuries sustained by law enforcement officers in the handling of domestic disturbances. A definite correlation between family violence and marital homicide has been established, yet police arrests for family violence are low, and victims are reluctant to press charges. Furthermore, instances of family violence are considered to be the single most unreported crime in the state.

C. It is the intention of the legislature to achieve a reduction in serious and fatal injuries to the victims of family violence and to clarify the problems, causes, and remediation of family violence by providing the necessary services including shelter, counseling, and referrals to social services, medical care and legal assistance in the form of a family violence center.

Added by Acts 1979, No. 746, § 1.

§ 2122. Program creation; duties of secretary

A. From federal funds, state funds, or funds made available from private or local sources for this purpose, the secretary of the Department of Health and Human Resources is hereby authorized to establish a family violence program for the development of community-based shelters for victims of family violence. The secretary shall establish such program within the Bureau for Women which shall be the recipient of any funds made available for the program.

B. The secretary shall establish standards for the expenditure of state funds made available from federal, private, or local sources and shall assure the availability of personnel, resources, and equipment necessary for the purpose of this Chapter.

Added by Acts 1979, No. 746, § 1.

§ 2123. Program functions; duties of the designate of the secretary

A designee of the secretary shall develop and administer the program to do the following:

(1) Establish full-time, community-based, family-oriented shelters for the victims of family violence and their children.

(2) Increase, improve, and coordinate the delivery of comprehensive services to the victims of marital or family violence.

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(3) Provide the types of innovative approaches and methods in services designed to reduce the problems of marital and family violence.

Added by Acts 1979, No. 746, § 1.

§ 2124. Community shelters; funding; services

A. Through the program the secretary shall seek to establish a limited number of community-based shelters and family-oriented shelters for victims of family or marital violence. Such shelters may be developed on a contract basis with public or private agencies.

B. When applicable, the secretary shall contract with public or private agencies for the development of such shelters, and they shall choose such agencies from a list which shall be submitted as he provides.

C. Services of such community-based shelters shall include, but not be limited to the following:

(1) Around-the-clock day shelter which provides safe refuge and temporary lodging for victims of family violence and their children who are victims or potential victims. This shelter shall include a day program or drop-in center which can assist the victims of family violence who have not yet made the decision to leave their homes, or who have found other shelter but who have a need for the services provided at the centers.

(2) Emergency psychological support and counseling to the victims of marital violence and their children.

(3) Information and referral regarding reeducation, job counseling, training programs, employee and placement assistance, housing, emergency medical care, emergency legal assistance, and other available social services.

D. Any contract entered into under the provisions of this Chapter shall be in accordance with public contracts laws of this state.

Added by Acts 1979, No. 746, § 1.

§ 2125. Evaluation; reports

A. Both the program created hereunder and the shelters it prescribes shall be evaluated by the House and Senate Committees on Health and Welfare at the end of the first fiscal year of the program and at the end of each subsequent fiscal year during which the program is continued. Such evaluation shall be designed to determine the effectiveness of the program in achieving its objectives.

B. A report of the evaluation shall be made to the legislature upon which recommendations for continued funding or termination of the program shall be based.

Added by Acts 1979, No. 746, § 1.

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PART II. DOMESTIC ABUSE ASSISTANCE

§ 2131. Purposes

The purpose of this Part is to recognize and address the complex legal and social problems created by domestic violence. The legislature finds that existing laws which regulate the dissolution of marriage do not adequately address problems of protecting and assisting the victims of domestic abuse. The legislature further finds that previous societal attitudes have been reflected in the policies and practices of law enforcement agencies and prosecutors which have resulted in different treatment of crimes occurring between family or household members and those occurring between strangers. It is the intent of the legislature to provide a civil remedy for domestic violence which will afford the victim immediate and easily accessible protection. Furthermore, it is the intent of the legislature that the official response of law enforcement agencies to cases of domestic violence shall stress the enforcement of laws to protect the victim and shall communicate the attitude that violent behavior is not excused or tolerated.

Added by Acts 1982, No. 782, § 2.

Library References

Breach of the Peace ☞16.

C.J.S. Breach of the Peace § 17.

§ 2132. Definitions

As used in this Part:

(1) "Adult" means any person eighteen years of age or older, or any person under the age of eighteen who has been emancipated by marriage or otherwise.

(2) "Court" shall mean any court of competent jurisdiction in the state of Louisiana.

(3) "Domestic abuse" includes but is not limited to physical abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another.

(4) "Family or household member" means spouses, former spouses, parents and children, step-parents, step-children, foster parents, and ¹ foster children who are seeking protection under this Part.

Added by Acts 1982, No. 782, § 2.

¹ In par. (4), "and" was added on authority of R.S. 24:253.

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§ 2133. Jurisdiction; venue; standing

A. Any court in the state of Louisiana which is empowered to hear family matters shall have jurisdiction over proceedings appropriate to it under this Part.

B. Venue lies:

(1) In the parish where the marital domicile is located; or

(2) In the parish where the defendant resides; or

(3) In the parish where the abuse is alleged to have been committed.

C. An adult may seek relief under this Part by filing a petition with the court alleging abuse by the defendant. Any parent, adult household member, or district attorney may seek relief on behalf of any minor child or any person alleged to be incompetent by filing a petition with the court alleging abuse by the defendant. A petitioner's right to relief under this Part shall not be affected by leaving the residence or ¹ household to avoid further abuse.

Added by Acts 1982, No. 782, § 2.

¹ In subsec. C, "or" was substituted for "of" on authority of R.S. 24:253.

§ 2134. Petition

A. A petition filed under the provisions of this Part shall contain the following:

(1) The name, address, and parish of residence of each petitioner and each person on whose behalf the petition is filed, and that of each individual alleged to have committed abuse, if known; if the petition is being filed on behalf of a child or person alleged to be incompetent, the relationship between that person and the petitioner.

(2) The facts and circumstances concerning the alleged abuse.

(3) The relationship between each petitioner and each individual alleged to have committed abuse.

(4) A request for one or more protective orders.

B. If the petition requests a protective order for a spouse and alleges that the other spouse has committed abuse, the petition shall state whether a suit for separation or divorce is pending.

C. If the petition requests the issuance of an ex parte temporary restraining order, the petition shall contain an affidavit signed by each petitioner that the facts and circumstances contained in the petition are true and correct to the best knowledge, information, and belief of petitioner. Any false statement under oath contained in the affidavit shall constitute perjury and shall be punishable by a fine of not more than one thousand dollars, or by imprisonment, with or without hard labor, for not more than five years, or both.

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D. If a suit for separation or divorce is pending, any application for a protective order shall be filed in that proceeding and shall be heard within the delays provided by this Part. Any decree issued in a separation or a divorce proceeding filed subsequent to a petition filed or an order issued pursuant to this Part may, in the discretion of the court hearing the separation or divorce proceeding, supercede in whole or in part the orders issued pursuant to this Part. Such subsequent decree shall be forwarded by the rendering court to the court having jurisdiction of the petition for a protective order and shall be made a part of the record thereof. The findings and rulings made in connection with such protective orders shall not be res judicata in any subsequent proceeding.

Added by Acts 1982, No. 782, § 2.

§ 2135. Temporary restraining order

A. Upon good cause shown in an ex parte proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse the petitioner, any minor children, or any person alleged to be an incompetent. Immediate and present danger of abuse shall constitute good cause for purposes of this Subsection. The order may include, but is not limited to, the following:

(1) Directing the defendant to refrain from abusing, harassing, or interfering with the person or employment or going near the residence or place of employment of the petitioner, the minor children, or any person alleged to be incompetent, on whose behalf a petition was filed under this Part.

(2) Awarding to a party use and possession of specified community property, such as an automobile.

(3) Granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or restoring possession to the petitioner where:

(a) The residence is jointly owned in equal proportion or leased by the defendant and the petitioner or the person on whose behalf the petition is brought;

(b) The residence is solely owned by the petitioner or the person on whose behalf the petition is brought; or

(c) The residence is solely leased by defendant and defendant has a duty to support the petitioner or the person on whose behalf the petition is brought.

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(4) Prohibiting either party from the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business, or for the necessary support of the party or the minor children.

(5) Awarding temporary custody of minor children or persons alleged to be incompetent.

B. If a temporary restraining order is granted without notice, the matter shall be set within ten days for a rule to show cause why the protective order should not be issued, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. The defendant shall be given notice of the temporary restraining order and the hearing on the rule to show cause by service of process as required by law within twenty-four hours of the issuance of the order.

C. During the existence of the temporary restraining order, the defendant shall have the right to return to the family residence once to recover personal clothing and necessities, provided the defendant is accompanied by a law enforcement officer to insure the protection of the petitioner or person on whose behalf the petition is brought.

D. If no temporary restraining order has been granted, the court shall issue a rule to show cause why the protective order should not be issued, and set the rule for hearing on the earliest day that the business of the court will permit, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. The defendant shall be given notice by service of process as required by law.

E. If the hearing pursuant to R.S. 46:2135(B) or (D)¹ is continued, the court shall make or extend such temporary restraining orders as it deems necessary. Any continuance of a hearing ordered pursuant to R.S. 46:2135(B) or (D)¹ shall not exceed ten days.

F. The court may, in its discretion, grant an emergency temporary restraining order outside regular court hours.

Added by Acts 1982, No. 782, § 2.

¹ In subsec. E, "(B) or (D)" was substituted for "(A) or (C)" on authority of R.S. 24:253.

§ 2136. Protective orders; content; modification; service

A. The court may grant any protective order or approve any consent agreement to bring about a cessation of abuse of a party, any minor children, or any person alleged to be incompetent, which relief may include, but is not limited to:

(1) Granting the relief enumerated in R.S. 46:2135.

(2) Where there is a duty to support a party, any minor children, or any person alleged to be incompetent living in the residence or household, ordering payment of temporary support or provision of suitable housing for them.

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(3) Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor children or person alleged to be incompetent.

(4) Ordering counselling or professional medical treatment for the defendant or the abused person, or both.

B. On the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior order to exclude any item included in the prior order, or to include any item that could have been included in the prior order.

C. A protective order made under this Part shall be served on the person to whom the order applies in open court at the close of the hearing, or in the same manner as a writ of injunction. The clerk of the issuing court shall send a copy of the order or any modification thereof to the chief law enforcement official of the parish where the person or persons protected by the order reside. A copy of the protective order shall be retained on file in the office of the chief law enforcement officer as provided herein until otherwise directed by the court.

D. Any final protective order or approved consent agreement shall be for a fixed period of time, not to exceed three months, and may be extended by the court, after a contradictory hearing, in its discretion. Such protective order or extension thereof shall be subject to a devolutive appeal only.

Added by Acts 1982, No. 782, § 2.

§ 2137. Penalties; notice of penalty in order

A. Upon violation of a temporary restraining order, a protective order, or a court approved consent agreement, the court may hold the defendant in contempt of court and punish the defendant by imprisonment in the parish jail for not more than six months or a fine of not more than five hundred dollars, or both, and may order that all or a part of any fine be forwarded for the support of petitioner and dependents, in the discretion of the court. Such sentence shall be imposed only after trial by the judge of a rule against the defendant to show cause why he should not be adjudged guilty of contempt and punished accordingly. The rule to show cause may issue on the court's own motion, or on motion of a party to the action or proceeding, and shall state the facts alleged to constitute the contempt. A certified copy of the motion, and of the rule to show cause, shall be served upon the person charged with contempt in the same manner as a subpoena, at least forty-eight hours before the time assigned for the trial of the rule, which shall be scheduled within five days of the filing of the motion for contempt.

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B. Each protective order issued under this Part, including a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF NOT MORE THAN \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH, AND MAY BE FURTHER PUNISHED UNDER THE CRIMINAL LAWS OF THE STATE OF LOUISIANA. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS AND COURTS OF THE STATE OF LOUISIANA."

C. Nothing contained herein shall be construed as a limitation on any applicable provisions of the Louisiana Criminal Code.

Added by Acts 1982, No. 782, § 2.

§ 2138. Assistance of clerk of court

The clerk of court shall make forms available for making application for protective orders under this Part, provide clerical assistance to the petitioner when necessary, advise indigent applicants of the availability of filing *in forma pauperis*, provide the necessary forms, and provide the services of a notary, where available, for completion of the affidavit required in R.S. 46:2134(C).

Added by Acts 1982, No. 782, § 2.

§ 2139. Other relief not affected

The granting of any relief authorized under this Part shall not preclude any other relief authorized by law.

Added by Acts 1982, No. 782, § 2.

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	17-A-1321 et seq.
2.1 Sentencing Option	17-A-1204(2-A)(B)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	17-A-1323, 17-A-1330 (condition of work release)
2.5 Administration/Enforcement	17-A-1330 (work program release)
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	16-251
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	17-A-454
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	15-812(2)
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	17-A-1257(3)
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	17-A-1257(2)

Category	Citation
8.3 Testimony at Sentencing Hearing	17-A-1257(2)
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	25-3501 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	30-1130
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	17-A-1151(8)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	22-3470 et seq., 22-3477
12.4 Abuse, Neglect, Exploitation - Protective Services	22-3480 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	30-507
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	15-1205
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	22-8501
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	22-3474 (adult protective records)
15.4 Sexual Assault Counselor Privilege	16-53-A

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Maine Revised Statutes

Title 17-A

CHAPTER 54

RESTITUTION

Section

- 1321. Purpose.
- 1322. Definitions.
- 1323. Restitution authorized.
- 1324. Authorized claimants.
- 1325. Criteria for restitution.
- 1326. Time and method of restitution.
- 1327. Restitution deducted from judgment in civil action.
- 1328. Revocation of restitution.
- 1329. Default.

§ 1321. Purpose

The Legislature finds and declares that the victims of crimes often suffer losses through no fault of their own and for which there is no compensation. It also finds that repayment, in whole or in part, by the offender to the victim of his crime can operate to rehabilitate the offender in certain instances. It is the purpose of this chapter to encourage the compensation of victims by the person most responsible for the loss incurred by the victim, the offender. Restitution by the offender can serve to reinforce the offender's sense of responsibility for the offense, to provide him the opportunity to pay his debt to society and to his victim in a constructive manner, and to ease the burden of the victim as a result of the criminal conduct.

The Legislature recognizes that a crime is an offense against society as a whole, not only against the victim of the crime, and that restitution for victims is therefore ancillary to the central objectives of the criminal law. It intends restitution to be applied only when other purposes of sentencing can be appropriately served.

The Legislature does not intend the use of restitution to result in preferential treatment for offenders with substantial financial resources.

1977, c. 455, § 3.

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§ 1322. Definitions

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

1. **Collateral source.** "Collateral source" means a source of benefits or advantages for economic loss resulting from a crime, which the victim has received, or which is readily available to him from:

A. 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;

B. Social security, Medicare and Medicaid;

C. Workmen's compensation;

D. Wage continuation programs of any employer;

E. Proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminal conduct; or

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

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

3. **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, dependent's replacement services loss and property loss. Noneconomic detriment is not loss. Economic detriment is loss although caused by pain and suffering or physical impairment.

A. **Allowable expense.** "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, and nonmedical remedial care and treatment rendered in accordance with a recognized religious method of healing. 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 por-

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tion 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 semiprivate accommodations, unless other accommodations are medically required.

B. Dependent's economic loss. "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.

C. Dependent's replacement services loss. "Dependent's replacement 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.

D. Property loss. "Property loss" means the value of property taken from the victim, or of property destroyed or otherwise broken or harmed.

E. Replacement services loss. "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.

F. Work loss. "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 for substitute work actually performed by him or by income he would have earned in available appropriate substitute work he was capable of performing but unreasonably failed to undertake.

4. Noneconomic detriment. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and other nonpecuniary damage.

5. Offender. "Offender" means any natural person convicted of a crime.

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RESTITUTION 17-A § 1324

6. Restitution. "Restitution" means:

A. Monetary reimbursement, in whole or in part, for economic loss;

B. Work or service provided to a victim for economic loss; or

C. Any combination of service or monetary reimbursement by an offender to the victim of his crime or to other authorized claimants, either directly or indirectly.

7. Victim. "Victim" means a person who suffers personal injury, death or economic loss as a result of a crime or the good faith effort of any person to prevent a crime.

1977, c. 455, § 3.

Library References

Criminal Law § 1220.

C.J.S. Criminal Law § 2007.

§ 1323. Mandatory consideration of restitution

1. Inquiry as to victim's financial loss. The court shall, whenever practicable, inquire of a prosecutor, police officer or victim with respect to the extent of the victim's financial loss, and shall order restitution where appropriate.

2. Reasons for not imposing restitution. In any case where the court determines that restitution should not be imposed in accordance with the criteria set forth in section 1325, the court shall state in open court or in writing the reasons for not imposing restitution.

§ 1324. Authorized claimants

Restitution may be authorized for:

1. Victim. The victim or a dependent of a deceased victim;

2. County. The county where the offense was prosecuted if the victim voluntarily refuses restitution or if the identity of the victim cannot be ascertained;

3. Person providing recovery. Any person, firm, organization, corporation or government entity which has provided recovery to the victim as a collateral source, but only to the extent that such recovery was actually made; and

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4. Person acting on behalf of victim. Any person legally authorized to act on behalf of the victim.
1977, c. 455, § 3.

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

Notes of Decisions

1. In general

On appeal from proceeding in which defendant was convicted of criminal mischief and in which restitution was ordered as a condition of probation, defendant was not entitled to relief on theory that trial court erred in not directing to whom restitution was to be made, in light of

fact that, though the written judgment merely stated that restitution was to be made in the first ten months as determined by probation and parole department, the oral pronouncement of sentence expressly mandated reimbursement to certain company. *State v. Stinson* (1981) Me., 424 A.2d 327.

§ 1325. Criteria for restitution

1. Restitution authorized. Restitution may be authorized, in whole or in part, as compensation for economic loss. In determining the amount of restitution authorized, the following shall be considered:

- A. The contributory misconduct of the victim;
- B. Failure to report the crime to a law enforcement officer within 72 hours after its occurrence, without good cause for failure to report within that time; and
- C. The financial ability of the offender to pay restitution.

2. Restitution not authorized. Restitution shall not be authorized:

- A. To a victim without that victim's consent;
- B. To a victim who is an accomplice of the offender;
- C. To a victim who has otherwise been compensated from a collateral source, but economic loss in excess of the collateral compensation may be authorized; and
- D. When the amount and method of payment of monetary restitution or the performance of service restitution will create an excessive financial hardship on the offender or dependent of the offender. In making this determination, all relevant factors shall be considered, including, but not limited to the following:

- (1) The number of the offender's dependents;
- (2) The usual living expenses of the offender and his dependents;

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(3) The special needs of the offender and his dependents, including necessary travel expense to and from work;

(4) The offender's income and potential earning capacity; and

(5) The offender's resources.

§ 1326. Time and method of restitution

When restitution is authorized, the time and method of payment or of the performance of the services shall be specified. Monetary compensation which is not to be paid in installments or at a later specified time shall be paid to the clerk of the court having jurisdiction over the offender. In those cases, the clerk shall make the disbursement to the victim or other authorized claimant. All other payments and disbursements shall be made by the appropriate governmental agency or institution having jurisdiction or custody of the offender.

1977, c. 455, § 3.

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

Notes of Decisions

1. In general

The parts of sentence ordering defendant to make restitution to victims were illegal because of the justice's failure to comply with require-

ments of requiring inquiry into defendant's financial status and ability to pay and to specify the time and method of payment. *State v. Blanchard* (1979) Me., 409 A.2d 229.

§ 1327. Restitution deducted from judgment in civil action

Any restitution ordered and paid shall be deducted from the amount of any judgment awarded in a civil action brought by the victim against the offender based on the same facts. If the restitution ordered and made was work restitution, the reasonable value of the services may be deducted from any such judgment.

1977, c. 455, § 3.

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§ 1328. Revocation of restitution

1. **Petition.** A convicted person, who has been sentenced to pay restitution has not inexcusably defaulted in payment thereof, may at any time petition the court which sentenced him for a revocation of any unpaid portion thereof. If the court finds that the circumstances which warranted the imposition of the restitution have changed, or that it would otherwise be unjust to require payment, the court may revoke the unpaid portion thereof in whole or in part, or modify the time and method of payment.

2. **Final judgment.** If, in any judicial proceeding following conviction, a court issues a final judgment invalidating the conviction, such judgment may include an order that any or all of a restitution payment which the convicted person paid pursuant to the sentence for such conviction be returned to him.

1977, c. 455, § 3.

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

§ 1329. Default

1. **Return to court.** An offender who has been sentenced to make restitution and has defaulted in payment or service thereof shall be returned to court for further disposition.

2. **Reports.** A probation officer having knowledge of a default in restitution by an offender shall report the default to the office of the district attorney. A district attorney having knowledge of a default in restitution by an offender shall report the default to the court.

1981, c. 360.

§1330. Work program release; restitution

1. Work program; payment of restitution. Any defendant who has been sentenced to a period of imprisonment may be released pursuant to a work program administered under Title 34, including county jail prisoners released for employment. The institution in which the inmate is incarcerated shall propose to the court a plan of restitution from the proceeds of work release where appropriate, which shall include a definite percentage of gross wages to be paid as restitution that is not less than 25%. No inmate may be released under this section unless he consents to the plan, and any plan may be terminated by the court for refusal to pay. No plan under this section may become effective without the approval of the court. The institution in which the inmate is incarcerated shall collect and disburse to any victim that portion of the inmate's wages approved for payment as restitution.

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2. Payment of restitution from other sources. Any inmate, other than one addressed by subsection 1, who is able to generate income, from whatever source, shall pay 25% of that income to any victim if the court has ordered that restitution be paid.

Title 16

§ 1204. Conditions of probation

1. If the court imposes a suspended sentence of imprisonment with probation or a suspended fine with probation, it shall attach such conditions of probation, as authorized by this section, as it deems to be reasonable and appropriate to assist the convicted person to lead a law-abiding life, provided that in every case it shall be a condition of probation that the convicted person refrain from criminal conduct.

2. Repealed. 1975, c. 740, § 110, eff. May 1, 1976.

2-A. As a condition of probation, the court in its sentence may require the convicted person:

A. To support his dependents and to meet his family responsibilities;

B. To make restitution pursuant to chapter 54 to each victim of his crime, or to the county where the offense is prosecuted if the identity of the victim cannot be ascertained or if the victim voluntarily refuses the restitution.

C. To devote himself to an approved employment or occupation.

Title 17-A

§ 251. Fees of witnesses

Witnesses, other than members of the State Police or municipal police officers, in the Supreme Judicial Court, the Superior Court, the District Court or in the Probate Court, unless the court shall otherwise order, shall receive \$10, and before referees, auditors or commissioners specially appointed to take testimony or special commissioners on disputed claims appointed by Probate Courts, \$10, or before the county commissioners, \$10 for each day's attendance and 22¢ a mile for each mile's travel going and returning home. The court in its discretion may allow at the trial of any cause, civil or criminal, in said Supreme Judicial Court or the Superior Court, a reasonable sum for each day's attendance of any expert witness or witnesses at said trial, in taxing the costs of the prevailing party, and the expense of all expert witnesses for the State in murder cases shall be paid by the State and charged against the appropriation for the Department of the Attorney General. Such party or his attorney of record shall first file an affidavit within 30 days after entry of

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judgment and before the cause is settled, stating the name, residence, number of days in attendance and the actual amount paid or to be paid each expert witness in attendance at such trial. No more than \$10 per day shall be allowed or taxed by the clerk of courts in the costs of any civil action for the per diem attendance of a witness, unless the affidavit is filed, and the per diem is determined and allowed by the presiding justice.

1983, c. 538, § 1.

1983 Amendment. Chapter 538, in first sentence, substituted "22c" for "10c".

Sec. 1. 17-A MRSA §454, as repealed and replaced by PL 1977, c. 510, §54, is amended to read:

§454. Tampering with a witness, informant or victim

1. A person is guilty of tampering with a witness or informant or victim if, believing that an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted:

A. He induces or otherwise causes, or attempts to induce or cause, a witness or informant or victim:

(1) To testify or inform falsely; or

(2) To withhold any testimony, information or evidence, which he knows the witness or informant is not privileged to withhold;

B. He uses force, violence or intimidation, or he promises, offers or gives any pecuniary bene-

fit with the intent to induce a witness or informant or victim:

(1) To ~~withhold~~ withhold any testimony, information or evidence;

(2) To absent himself from any criminal proceeding or criminal investigation; or

(3) To absent himself from any other proceeding or investigation to which he has been summoned by legal process; or

C. He solicits, accepts or agrees to accept any pecuniary benefit in consideration of his doing any of the things specified in paragraph A, subparagraph (1), or in paragraph B, subparagraphs subparagraph (1), (2) or (3).

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2. Tampering with a witness or informant is a Class C crime. Tampering with a victim is a Class B crime.

3. "Victim" means a person who suffers bodily injury, death or economic loss as a result of a crime or the good faith effort of any person to prevent a crime.

Title 15

§ 812. Negotiated pleas.

1. **Legislative intent and findings.** The Legislature finds that there is citizen dissatisfaction with plea bargaining which has resulted in some criticism of the criminal justice process. The Legislature further finds that part of the dissatisfaction is caused because victims of crimes and law enforcement officers who respond to those crimes have no subsequent contact with the cases as they proceed through the courts for judicial disposition. Victims and law enforcement officers are many times not informed by prosecutors of plea agreements which are to be submitted to the court for approval or rejection under existing Maine Rules of Criminal Procedure. It is the intent of this section to alleviate these expressions of citizen dissatisfaction and to promote greater understanding by prosecutors of citizens' valid concerns. This is most likely to be accomplished by citizens and law enforcement officers being informed of the results of plea negotiations before they are submitted to the courts. This notification will in no way affect the authority of the judge to accept, reject or modify the terms of the plea agreement.

2. **Notification to victims and law enforcement officers.** Before submitting a negotiated plea to the court, the attorney for the State shall advise the victim or victims, if available, and the relevant law enforcement officers of the details of the plea agreement reached in any prosecution where the defendant was originally charged with murder, a Class A, B or C crime or a violation of Title 17-A, chapter 9, 11 or 13.¹

1981, c. 685.

¹ Section 201 et seq., Section 251 et seq., Section 301 et seq. of title 32.

Library References

Criminal Law \Rightarrow 273.1(2).
C.J.S. Criminal Law § 423(5).

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Title 17-A

Sec. 2. 17-A MRSA §1257 is enacted to read:

§1257. Victim's right to participate in sentence.

1. Prosecutor; right to be heard. In any case where a defendant has been convicted of any crime either upon his plea or after trial, the prosecutor shall have the right to be heard at the time of sentence. The prosecutor may recommend a specific sentence or other disposition.

2. Victim; right to be heard. In any case where a defendant has been convicted of a crime and a victim of the crime is present in the courtroom at the time of sentencing, the victim upon his request shall have the right to address the court. If the victim is unable or unwilling to appear in the courtroom, he may submit a written statement to the court which shall become part of the record. The prosecutor may inform the court of the victim's statement, if any, at the time of sentencing. The court shall consider any statements made by the prosecutor or victim, along with all other appropriate factors, in determining the sentence.

3. Notification of victim. To encourage victim participation in sentencing, the prosecutor shall, whenever practicable, notify any victim of the time and place of sentencing.

Title 25

CHAPTER 401

DISPOSAL OF ABANDONED, LOST OR STOLEN PERSONAL PROPERTY
BY LAW ENFORCEMENT AGENCIES

Section	Section
3501. Application of chapter.	3504. Deposit of proceeds.
3502. Custody and return of property believed to be abandoned, lost or stolen.	3505. Recovery of property by owner or person entitled to possession; limitation.
3503. Sale of unclaimed property.	3506. Damages occasioned by acts or omissions.
3503-A. Disposal of firearms and ammunition [New].	3507. Property returned to finder.

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Part 9, Law Enforcement Agencies in General, and Chapter 401, Disposal of Abandoned, Lost or Stolen Personal Property by Law Enforcement Agencies, were added by 1975, c. 558, effective June 23, 1975.

§ 3501. Application of chapter.

This chapter shall apply to all personal property of which possession is transferred to a police department or other law enforcement agency of the State or any political subdivision thereof, under circumstances supporting a reasonable belief that such property was abandoned, lost or stolen, or otherwise illegally possessed, except property seized during search and retained and ultimately returned, destroyed or otherwise disposed of pursuant to a court order or some other law hereafter applicable to specific property or circumstance. This chapter shall apply to personal property seized during search and retained which is not offered or admitted as evidence and which, after retention by a police department or other law enforcement agency, becomes abandoned.

1975, c. 558, eff. June 23, 1975; 1983, c. 254, § 1.

1983 Amendment. Chapter 254 added last sentence.

C.J.S. Criminal Law §§ 2004, 2006.

C.J.S. Finding Lost Goods § 1 et seq.

Library References

Criminal Law: § 1221.

Finding Lost Goods: § 2 et seq.

§ 3502. Custody and return of property believed to be abandoned, lost or stolen

Such property believed to be abandoned, lost or stolen or otherwise illegally possessed, as is covered by this chapter, shall be retained in custody by the chief of police or the principal official of the law enforcement agency, who shall make reasonable inquiry and efforts to identify and notify the owner or other person entitled to possession thereof and shall return the property after such person provides reasonable and satisfactory proof of his ownership or right to possession and reimburses the agency and others authorized to incur expenses by the agency for all reasonable expenses of such custody. If the owner of such property or any other person entitled to possession thereof has not been identified within 30 days from the initial date of custody of such property by a law enforcement agency, the principal official of such agency shall cause to be published, at least once in a newspaper of general circulation in the county wherein such official has authority or in the state paper in the case of a state law enforcement agency, a notice of his agency's possession of such property and its inability to ascertain the owner thereof. Such notice shall also contain a brief description of the property and a statement to the effect that, if the owner of such property or any other person entitled to possession thereof has not claimed such property within 5 months of the date of such published notice, such property will either be surrendered to the person who found it, if any, or be sold to the highest bidder at public auction.

1975, c. 558, eff. June 23, 1975.

§ 3503. Sale of unclaimed property.

If the identity or location of the owner or other person entitled to possession of the property has not been ascertained within 6 months after the law enforcement agency obtains such possession, or said identity has been determined and such person does not claim possession within this 6-month period, and the finder of such property, if any, has not claimed it pursuant to the provisions of section 3507 within 15 days after the expiration of said 6-month period, the principal official thereof shall effectuate the sale of the property for cash to the highest bidder at a public auction, notice of which, including time, place and a brief description of such property, shall be published at least once in a newspaper of general circulation in the county wherein such official has authority at least 10 days prior to such auction or in the state paper in the case of a state law enforcement agency. Property offered but not sold at such public auction may be offered at a subsequent public auction without further notice.

1975, c. 558, eff. June 23, 1975.

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§ 3503-A. Disposal of firearms and ammunition

Notwithstanding any other provision of this chapter, a police department or other law enforcement agency retaining firearms and ammunition covered by this chapter may auction the firearms to federally-licensed firearms dealers, use the firearms and ammunition for training purposes or destroy the firearms and ammunition.

1983, c. 254, § 2

§ 3504. Deposit of proceeds

Proceeds of the sale of the property at public auction, less reimbursement to the law enforcement agency and others authorized of the reasonable expenses of custody shall be disposed of according to Title 33, chapter 27.

1975, c. 558, eff. June 23, 1975; 1979, c. 641, § 7

Section 1301 et seq. of title 33.

1979 Amendment. Chapter 641 deleted "thereof" following "custody" and substituted "disposed of according to Title 33, chapter 27" for "deposited in the State Treasury or the treasury of the appropriate political subdivision thereof to be expended as provided by law".

§ 3505. Recovery of property by owner or person entitled to possession; limitation

The owner or other person entitled to possession of such property may claim and recover possession of the property at any time before its sale at public auction, upon providing reasonable and satisfactory proof of ownership or right to possession and reimbursing the law enforcement agency and others authorized for all reasonable expenses for custody thereof.

1975, c. 558, eff. June 23, 1975.

§ 3506. Damages occasioned by acts or omissions

No person shall be responsible for subsequent damages to another occasioned by an act or omission in compliance with this chapter.

1975, c. 558, eff. June 23, 1975.

Title 30

Sec. 5. 30 MRSA §1130 is enacted to read:

§1130. Victim and witness support

Each county is encouraged to establish a victim and witness support program to assist the victims and witnesses of criminal offenses in the prosecution thereof. Each county is further encouraged to hire, train and provide support staff to a qualified person or persons to carry out the victim and witness support program. Any program established under this section shall be administered by the District Attorney for the prosecutorial district in which the county is located.

Approved May 27, 1983.

MAINE

Title 17-A

SENTENCING—CONSIDERATION OF AGE OF VICTIMS

CHAPTER 152

H.P. 1027 - L.D. 1328

AN ACT to Provide for Consideration of
the Age of the Victim in Sentencing Criminal
Offenders.

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

17-A MRSA §1151, sub-§8, as enacted by PL 1975, c. 499, §1, is amended to read:

8. To permit sentences which do not diminish the gravity of offenses, with reference to such factors, among others, as the age and vulnerability of the victim.

Title 22

§ 3471. Declaration of policy and legislative intent

The Legislature recognizes that many adult citizens of the State, because of incapacitation, are unable to manage their own affairs or to protect themselves from abuse, neglect, exploitation or physical danger. Often these persons cannot find others able or willing to render assistance. The Legislature intends, through this Act, to establish a program of protective services designed to fill this need and to assure its availability to all incapacitated and dependent adults who are faced with abuse, neglect, exploitation or physical danger. It is also the intent of the Legislature to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's need for services and to require that due process be followed in imposing those restrictions.

1981, c. 527, § 2.

Derivation:

1973, c. 631, § 2.

Former § 3460 of this title.

§ 3472. Definitions

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

1. Abuse. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish; or the willful deprivation of essential needs.

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2. **Adult.** "Adult" means any person who has attained the age of 18 years.
3. **Caretaker.** "Caretaker" means any individual or institution who has or assumes the responsibility for the care of an adult.
4. **Commissioner.** "Commissioner" means the Commissioner of Human Services or his representative in the geographical area in which the person resides or is present or, in the case of mentally retarded adults, the Commissioner of Mental Health and Corrections or his representative in the geographical area in which the person resides or is present.
5. **Department.** "Department" means the Department of Human Services and, in the case of mentally retarded adults, the Commissioner of Mental Health and Corrections.
6. **Dependent adult.** "Dependent adult" means any adult who is wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, and who would be in danger if that care or support were withdrawn.
7. **Emergency.** "Emergency" refers to a situation where:
 - A. The incapacitated or dependent adult is in immediate risk of serious harm;
 - B. The incapacitated or dependent adult is unable to consent to services which will diminish or eliminate the risk; and
 - C. There is no guardian to consent to emergency services.
8. **Emergency services.** "Emergency services" refer to those services necessary to avoid serious harm.
9. **Exploitation.** "Exploitation" means the illegal or improper use of an incapacitated or dependent adult or his resources for another's profit or advantage.
10. **Incapacitated adult.** "Incapacitated adult" means any adult who is impaired by reason of mental illness, mental deficiency, physical illness or disability to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, or to the extent the adult cannot effectively manage or apply his estate to necessary ends.
11. **Neglect.** "Neglect" means a threat to an adult's health or welfare by physical or mental injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these.
12. **Protective services.** "Protective services" means services which will separate incapacitated or dependent adults from danger. Protective services include, but are not limited to, social, medical and psychiatric services necessary to preserve the incapacitated adult's rights and resources and to maintain the incapacitated adult's physical and mental well-being.
Protective services may include seeking guardianship or a protective order under Title 18-A, Article 5.¹ The department shall classify as protective clients the incapacitated adults who receive protective services.
13. **Serious harm.** "Serious harm" means:
 - A. Serious injury;
 - B. Serious mental injury or impairment, evidenced by severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; or
 - C. Sexual abuse or exploitation.

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14. **Serious injury.** "Serious injury" means serious physical injury or impairment. 1981, c. 527, § 2.

¹ Section 5-101 of title 18-A.

Derivation:

1973, c. 631, § 2.
1973, c. 790, §§ 5, 6.
1981, c. 470, §§ A, 97, 98.
1981, c. 698, §§ 93, 94.

Former § 3461 of this title.

Cross References

Mental retardation services, protective services, definition, see title 34, § 2616.

§ 3473. Authorizations

1. **General.** The department shall act to:
 - A. Protect abused, neglected or exploited incapacitated and dependent adults in circumstances which present a substantial risk of abuse, neglect or exploitation;
 - B. Prevent further abuse, neglect or exploitation;
 - C. Enhance the welfare of these incapacitated and dependent adults; and
 - D. Promote self-care wherever possible.
2. **Reports.** The department shall:
 - A. Receive, promptly investigate and determine the validity of reports of alleged abuse, neglect or exploitation;
 - B. Take appropriate action, including providing or arranging for the provision of appropriate services; and
 - C. Petition for guardianship or a protective order under Title 18-A, Article 5,¹ when all less restrictive alternatives have been tried and have failed to protect the incapacitated adult.

§ 3474. Records; confidentiality, disclosure

1. **Confidentiality of adult protective records.** All department records which contain personally identifying information and are created or obtained in connection with the department's adult protective activities and activities related to an adult while under the jurisdiction of the department are confidential and subject to release only under the conditions of subsections 2 and 3. Within the department, the records shall be available only to and used by authorized departmental personnel and legal counsel for the department in carrying out their functions.
2. **Optional disclosure of records.** The department may disclose relevant information in the records to the following persons:
 - A. An agency investigating a report of adult abuse, neglect or exploitation when the investigation is authorized by statute or by an agreement with the department;
 - B. An advocacy agency conducting an investigation under chapter 961;¹
 - C. A physician treating an incapacitated or dependent adult whom he reasonably suspects may be abused, neglected or exploited;
 - D. An incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited, or the caretaker of the incapacitated or dependent adult, with protection for identity of reporters and other persons when appropriate;
 - E. A person having the legal responsibility or authorization to care for, evaluate, treat or supervise an incapacitated or dependent adult; and
 - F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or his designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact.

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3. **Mandatory disclosure of records.** The department shall disclose relevant information in the records to the following persons:

- A. The guardian ad litem of an incapacitated or dependent adult named in a record who is reported to be abused, neglected or exploited;
- B. A court on its finding that access to those records may be necessary for the determination of any issue before the court. Access shall be limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it; and
- C. A grand jury on its determination that access to those records is necessary in the conduct of its official business.

1981, c. 527, § 2.

¹ Section 3551 et seq. of this title.

§ 3475. **Penalty for violations**

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Any licensed, registered, accredited or certified professional who has been adjudged to have violated a provision of this chapter shall, in addition to any financial penalty, be reported by the court to the appropriate professional licensing, registration board, accrediting unit or facility.

1981, c. 527, § 2; 1981, c. 705, § E, 1, eff. May 4, 1982.

§ 3476. **Spiritual treatment**

1. **Treatment not considered abuse, neglect or exploitation.** An incapacitated or dependent adult shall not be considered to be abused, neglected or exploited solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization.

2. **Treatment to be considered if requested.** When medical treatment is authorized, under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the incapacitated or disabled adult or his caretaker.

1981, c. 527, § 2.

SUBCHAPTER 1-A

REPORTING OF ABUSE, NEGLECT OR EXPLOITATION [NEW]

Subchapter 1-A, Reporting of Abuse, Neglect or Exploitation, was enacted by 1981, c. 705, § E, 2, effective May 4, 1982.

Section	Section
3477. Persons mandated to report suspected abuse, neglect or exploitation.	3478. Mandatory reporting to medical examiner for post-mortem investigation.
	3479. Optional reporting.
	3479-A. Immunity from liability.

§ 3477. **Persons mandated to report suspected abuse, neglect or exploitation**

1. **Reasonable cause to suspect.** When, while acting in his professional capacity, an allopathic or osteopathic physician, intern, medical examiner, physician's assistant, dentist, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, social worker, psychologist, pharmacist, physical therapist, speech therapist, occupational therapist, mental health professional, law enforcement official, coroner, emergency room personnel, ambulance attendant or emergency medical technician suspects that an incapacitated adult has been abused, neglected or exploited, he shall immediately report or cause a report to be made to the department.

Whenever a person is required to report in his capacity as a member of the staff of a medical, public or private institution, agency or facility, he shall immediately notify the person in charge of the institution, agency or facility, or his designated agent, who shall then cause a report to be made. The staff person shall also make a report directly to the department.

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2. **Reports.** Reports regarding abuse, neglect or exploitation shall be made immediately by telephone to the department and shall be followed by a written report within 48 hours if requested by the department. The reports shall contain the name and address of the involved adult; information regarding the nature and extent of the abuse, neglect or exploitation; the source of the report; the person making the report; his occupation; and where he can be contacted. The report may contain any other information which the reporter believes may be helpful.

3. **Confidentiality in case of treatment.** This section does not require any person acting in their professional capacity to report when:

- A. The factual basis for knowing or suspecting abuse, neglect or exploitation of an adult covered under this subchapter derives from the professional's treatment of the individual suspected of causing the abuse, neglect or exploitation;
- B. The treatment was sought by the individual for a problem relating to the abuse, neglect or exploitation; and
- C. In the opinion of the person required to report, the abused, neglected or exploited adult's life or health is not immediately threatened.

§ 3478. **Mandatory reporting to medical examiner for post-mortem investigation**

A person required to report cases of known or suspected abuse or neglect, who knows or has reasonable cause to suspect that an adult has died as a result of abuse or neglect, shall report that fact to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his findings to the police, the appropriate district attorney, the department and, if the institution making the report is a hospital, the hospital.

1981, c. 705, § E, 2, eff. May 4, 1982.

§ 3479. **Optional reporting**

Any person may make a report if that person knows or has reasonable cause to suspect that an incapacitated or dependent adult has been abused, neglected or exploited.

1981, c. 705, § E, 2, eff. May 4, 1982.

§ 3479-A. **Immunity from liability**

1. **Reporting and proceedings.** A person participating in good faith in reporting under this subchapter, or in a related adult protection investigation or proceeding, is immune from any civil liability that might otherwise result from these actions.

2. **Presumption of good faith.** In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

1981, c. 705, § E, 2, eff. May 4, 1982.

SUBCHAPTER II

INVESTIGATIONS AND PROTECTIVE SERVICES

Section	Section
3480. Investigations.	3483. Emergency intervention; authorized entry of premises; immunity of petitioner.
3481. Providing for protective services with the consent of the person; withdrawal of consent; caretaker refusal.	3484. Payment for protective services.
3482. Providing for protective services to incapacitated adults who lack the capacity to consent.	3485. Reporting abuse.
	3486. Cooperation.
	3487. Adoption of standards.

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§ 3480. Investigations

1. Subpoenas and obtaining criminal history. The commissioner, his delegate or the legal counsel for the department may:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession which are necessary and relevant to an investigation of a report of suspected abuse, neglect or exploitation or to a subsequent adult protective proceeding;

(1) The department may apply to the District Court and Probate Court to enforce a subpoena; and

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department; and

B. Obtain nonconviction data and other criminal history record information under Title 16, section 611, which he deems relevant to a case of alleged abuse, neglect or exploitation.

2. Confidentiality. Information or records obtained by subpoena shall be treated in accordance with section 3474.

1981, c. 527, § 2.

§ 3481. Providing for protective services with the consent of the person; withdrawal of consent; caretaker refusal

When it has been determined that an incapacitated or dependent adult is in need of protective services, the department shall immediately provide or arrange for protective services, provided that the adult consents.

1. Consent. If an incapacitated or dependent adult does not consent to the receipt of protective services, or if he withdraws consent, the service shall not be provided.

2. Consent refused. When a private guardian or conservator of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for removal of the guardian pursuant to Title 18-A, section 5-307, or for removal of the conservator pursuant to Title 18-A, section 5-415. When a caretaker or guardian of an incapacitated adult who consents to the receipt of protective services refuses to allow those services to be provided to the incapacitated adult, the department may petition the Probate Court for temporary guardianship pursuant to Title 18-A, section 5-310 or for a protective arrangement pursuant to Title 18-A, section 5-409.

1981, c. 527, § 2.

Derivation:

1973, c. 631, § 2.

1981, c. 470, § A, 99.

Former § 3463 of this title.

§ 3482. Providing for protective services to incapacitated adults who lack the capacity to consent

If the department reasonably determines that an incapacitated adult is being abused, neglected or exploited and lacks capacity to consent to protective services, the department may petition the Probate Court for guardianship or conservatorship, in accordance with Title 18-A, section 5-601. The petition must allege specific facts sufficient to show that the incapacitated adult is in need of protective services and lacks capacity to consent to them.

1981, c. 527, § 2.

Derivation:

1973, c. 631, § 2.

1981, c. 470, § A, 99.

Former § 3463 of this title.

MAINE

§ 3483. Emergency intervention; authorized entry of premises; immunity of petitioner

1. Action. When the court has exercised the power of a guardian or has appointed the department temporary guardian pursuant to Title 18-A, section 5-310, and the ward or a caretaker refuses to relinquish care and custody to the court or to the department, then at the request of the department, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the ward for the department. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the ward is there.

2. Liability. No petitioner shall be held liable in any action brought by the incapacitated adult if the petitioner acted in good faith.

1981, c. 527, § 2.

§ 3484. Payment for protective services

At the time the department makes an evaluation of the case reported, it shall be determined, according to regulations set by the commissioner, whether the incapacitated or dependent adult is financially capable of paying for the essential services. To the extent that assets are available to incapacitated or dependent adults, or wards, the cost of services shall be borne by the estate of persons receiving those services.

1981, c. 527, § 2.

Derivation:

1973, c. 631, § 2.

Former § 3464 of this title.

§ 3485. Reporting abuse

Upon finding evidence indicating that a person has abused, neglected or exploited an incapacitated or dependent adult, the department shall notify the district attorney.

1981, c. 527, § 2.

§ 3486. Cooperation

All other state and local agencies as well as private agencies receiving public funds shall cooperate with the department in rendering protective services on behalf of incapacitated and dependent adults.

1981, c. 527, § 2.

§ 3487. Adoption of standards

The department shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of this chapter.

1981, c. 527, § 2.

Derivation:

1973, c. 631, § 2.

Former § 3462 of this title.

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Title 30

§ 507. Physical examination of crime victims

1. **Payment of expenses by district attorney.** In all cases of alleged rape, gross sexual misconduct, sexual abuse of minors and assault when serious bodily injury has been inflicted, which are reported to a law enforcement officer, the office of the district attorney of the county in which the alleged crime occurred shall pay all expenses for a physical examination of a victim of the alleged crime which is conducted for the purpose of obtaining evidence for the prosecution.

2. **Limitation.** In no event shall the office of the district attorney be liable for payment of any charges, costs or fees for an examination pursuant to subsection 1 until such time as the district attorney has received copies of all reports and records pertaining to and relevant to the examination, if the copies have been requested.

3. **Liability in damages of medical personnel for furnishing reports, records or testimony.** No physician, nurse, hospital, clinic or any other person, firm or corporation attending a victim pursuant to subsection 1 shall be liable in damages or otherwise for providing reports or records or copies thereof or for their testimony thereto relative to any examination performed pursuant to this section when such reports, records or testimony are provided to a district attorney, a law enforcement officer or a court for the purpose of prosecuting the alleged crime, whether or not such reports, records or testimony are provided with the written authorization of the victim so examined. This limitation on liability shall apply only in the circumstances in this subsection.

1975, c. 415; 1977, c. 99.

Title 15

MINORS' STATEMENTS DESCRIBING SEXUAL
CONTACT—ADMISSIBILITY IN
CRIMINAL PROCEEDINGS

MAINE

CHAPTER 411

H.P. 1201 - L.D. 1595

AN ACT Concerning the Admissibility in
Criminal Proceedings of Statements by Minors
Describing Sexual Contact.

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

15 MRSA §1205 is enacted to read:

§1205. Certain out-of-court statements made by minors describing sexual contact

A hearsay statement made by a person under the age of 14 years, describing any incident involving sexual intercourse, a sexual act or sexual contact performed with or on the minor by another, shall not be excluded as evidence in criminal proceedings in courts of this State if:

1. Emotional or psychological well-being of a person. On motion of the prosecution and in camera hearing, the court expressly finds that the emotional or psychological well-being of the person would be substantially impaired if the person were to testify at trial; and

2. Examination and cross-examination. Pursuant to an order of the court made on such finding, the statement is made under oath, the defendant has been given the same rights in regard to the examination and cross-examination of the person as if the person were testifying in open court, and the statement has been recorded stenographically or on videotape or by another means approved by the court.

Title 22

CHAPTER 1677

EMERGENCY SERVICES FOR VICTIMS OF
FAMILY VIOLENCE

MAINE

Section
8501. Provision of services.

*Chapter 1677, Emergency Services For Victims of
Family Violence, was enacted by Laws 1979, c. 565, § 1.*

§ 8501. Provision of services

The Department of Human Services shall provide, through social service contracts, emergency services for family members who cannot safely remain in their own homes because of violence, serious threat of violence or other serious family crisis. The emergency services shall include such services as shelter care, counseling and coordinating other necessary services.

The department shall make these services available to all areas of the State insofar as practicable.

1979, c. 565, § 1.

Title 16

§ 53-A. Privileged communications to sexual assault counselors

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. Rape crisis center. "Rape crisis center" means any publicly or privately funded agency, institution or facility existing in this State, having as its purpose to reduce the trauma of sexual assault to sexual assault victims and their families through crisis intervention, counseling, medical and legal information and dissemination of educational information pertaining to sexual assault.

B. Sexual assault counselor. "Sexual assault counselor" means a person who has:
(1) Undergone a program of training from a rape crisis center which shall include, but not be limited to: Law, medicine, societal attitudes, crisis intervention, counseling techniques and referral services; and
(2) Is either a staff member, paid or unpaid, or under the supervision of a staff member of a rape crisis center.

2. Privileged communications. Except with regard to reporting, cooperating in an investigation or giving evidence pursuant to Title 22, chapter 1071, or except at the request, or with the consent of, the victim of sexual assault, no sexual assault counselor may be required to testify in any civil or criminal action, suit or proceeding at law or in equity about any information which he may have acquired in providing sexual assault counseling services. A sexual assault counselor or a rape crisis center may not be required to disclose to the court any records, notes, memoranda or documents containing confidential communications. When a court in the exercise of sound discretion deems the disclosure necessary to the proper administration of justice, no information communicated to, or otherwise learned by, that sexual assault counselor in connection with the provision of sexual assault counseling services may be privileged and disclosure may be required.

1983, c. 319.

Category	Citation
1. Victim Compensation Program	26A-1 et seq.
1.1 Responsible Agency	26A-3
1.2 Eligible Claimants	26A-5
1.3 Losses Covered	26A-2(e)
1.4 Minimum and Maximum Award	26A-7, 26A-12
1.5 Required to Show Financial Need	26A-12(f)(1)
1.6 Required to Report Crime - Time Limit	26A-12(a)(1)
1.7 Filing of Claim - Time Limit	26A-6(b)
1.8 Emergency Award	26A-11
1.9 Funding	26A-17
2. Restitution	27-640 et seq.
2.1 Sentencing Option	27-640(b), 27-641(a), 27-641A(a)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	27-637 (execution against convict's property)
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	Cts. & Jud. Proc. §9-202
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	
6.2 Protective Orders	27-27
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	41-124(c)(2),(3)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	27-551(b),(c)
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	Health Gen. §15-127
13.2 Special Programs	88A-130 (rape crisis program)
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	27-11F (spousal assault)
14.1 Protective Orders	Cts. & Jud. Proc. §§4-501 et seq.
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	26A-4(c)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	26A-14 (victim compensation records)
15.4 Sexual Assault Counselor Privilege	

MARYLAND

Maryland Annotated Code of 1957

CRIMINAL INJURIES COMPENSATION ACT.

Sec.

1. Declaration of policy and legislative intent.
2. Definitions.
3. Criminal Injuries Compensation Board — Creation; composition; appointment, qualifications and terms of members; chairman; salaries.
4. Same — Powers and duties.
5. Eligibility for awards.
6. Filing of claims.
7. Minimum allowable claim.
8. Decisions on claims — By single Board member.

Sec.

9. Same — By full Board.
10. Same — Judicial review.
11. Emergency awards.
12. Prerequisites to award; amount; appointment; reduction or denial.
13. Manner of payment of award; execution or attachment.
14. Confidentiality of records.
15. Subrogation.
16. Penalty.
17. Additional costs to be imposed in criminal cases.

§ 1. Declaration of policy and legislative intent.

The legislature recognizes that many innocent persons suffer personal physical injury or death as a result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer disability, incur financial hardships or become dependent upon public assistance. The legislature finds and determines that there is a need for government financial assistance for such victims of crime. Accordingly, it is the legislature's intent that aid, care and support be provided by the State, as a matter of moral responsibility, for such victims of crime. (1968, ch. 455, § 1.)

Maryland Law Review. — For article, "Criminal Victim Compensation," see 30 Md. L. Rev. 266 (1970).

Purpose of article. — By enactment of this article, the General Assembly undertook to provide a measure of financial assistance in specified circumstances to innocent victims of crime and their dependents. *Gossard v. Criminal Injuries Comp. Bd.*, 279 Md. 309, 368 A.2d 443 (1977).

The intent of this article was to enable innocent victims of crime to receive compensation through government financial assistance. *Criminal Injuries Comp. Bd. v. Remson*, 282 Md. 168, 384 A.2d 58 (1978).
Cited in *Watson v. State*, 17 Md. App. 263, 301 A.2d 26 (1973).

§ 2. Definitions.

For the purpose of this article:

- (a) "Board" shall mean the Criminal Injuries Compensation Board.
- (b) "Claimant" shall mean the person filing a claim pursuant to this article.

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(c) "Crime" shall mean an act committed by any person in the State of Maryland which would constitute a crime as defined in Article 27 of the Annotated Code of Maryland (1967 Replacement Volume) or at common law, provided, however, that no act involving the operation of a vessel or motor vehicle which results in injury shall constitute a crime for the purpose of this article unless the injuries were intentionally inflicted through the use of a vessel or motor vehicle.

(d) "Family" when used with reference to a person, shall mean (1) any person related to such person within the third degree of consanguinity or affinity, (2) any person maintaining a sexual relationship with such person, or (3) any person residing in the same household with such person.

(e) "Victim" shall mean a person who suffers personal physical injury or death as a direct result of a crime. (1968, ch. 455, § 1.)

This article provides for financial assistance to the innocent victims of crime. *Frazier v. Unsatisfied Claim & Judgment Fund Bd.*, 262 Md. 115, 277 A.2d 57 (1971).

"Family". — The Court of Appeals views the broad definition of "family" found in the "Criminal Injuries Compensation Act" as limited to the purposes of that act. *Hicks v. Hatem*, 265 Md. 260, 289 A.2d 325 (1972).

An unambiguous definition of "family" is contained within the four corners of the Criminal Injuries Compensation Act itself. There is no reason to look elsewhere for assistance in interpreting its meaning. *Gossard v. Criminal Injuries Comp. Bd.*, 279 Md. 309, 368 A.2d 443 (1977).

"Related to". — There is no basis in policy, precedent or common sense for interpreting "related to" in paragraph (d) of this section as encompassing a legal relationship, since the words clearly modify "within the third degree of consanguinity," and thus refer solely to a blood kinship. *Gossard v. Criminal Injuries Comp.*

Bd., 279 Md. 309, 368 A.2d 443 (1977).

Civil-law method used in reckoning degrees of relationship. — The history and nature of the Criminal Injuries Compensation Act, and the legislature's declared policy and intent in enacting it, point clearly to the civil-law method vis-a-vis the common-law method in reckoning degrees of relationship between a claimant and a perpetrator of the crime. *Criminal Injuries Comp. Bd. v. Remson*, 282 Md. 168, 384 A.2d 58 (1978).

Consanguinity is relationship by blood. *Criminal Injuries Comp. Bd. v. Remson*, 282 Md. 168, 384 A.2d 58 (1978).

Affinity is relationship by marriage. *Criminal Injuries Comp. Bd. v. Remson*, 282 Md. 168, 384 A.2d 58 (1978).

Which requires husband and wife be considered as one. — The doctrine of affinity, by its definition and terms, requires that husband and wife be considered as one person. *Criminal Injuries Comp. Bd. v. Remson*, 282 Md. 168, 384 A.2d 58 (1978).

§ 3. Criminal Injuries Compensation Board — Creation; composition; appointment, qualifications and terms of members; chairman; salaries.

(a) There is hereby created in the Department of Public Safety and Correctional Services a Board, to be known as the Criminal Injuries Compensation Board, to consist of 3 members, no more than 2 of whom shall belong to the same political party. The members of the Board shall be appointed by the Secretary of Public Safety and Correctional Services, with the approval of the Governor, and with the advice and consent of the Senate. One member of the Board shall have been admitted to practice law in the State of Maryland for not less than five years next preceding his appointment.

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(b) The term of office of each such member shall be five years, except that the members first appointed shall serve for terms of five years, four years and three years respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired terms.

(c) The Secretary, with the approval of the Governor, shall designate one member of the Board as chairman, to serve at the pleasure of the Secretary.

(d) The members of the Board shall devote such time as is necessary to perform the duties imposed upon them. They shall receive an annual salary as may be provided in the annual budget. (1968, ch. 455, § 1; 1970, ch. 401, § 3; 1982, ch. 518; 1983, ch. 166.)

§ 4. Same — Powers and duties.

The Board, subject to the authority of the Secretary of Public Safety and Correctional Services as set forth in Article 41 of this Code, shall have the following powers and duties:

(a) To establish and maintain an office and appoint a claims examiner, a secretary, clerks, and such other employees and agents as may be necessary, such employees to be subject to the provisions of Article 64A, titled Merit System, and prescribe their duties.

(b) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this article, including rules for the approval of attorneys' fees for representation before the Board or before the court upon judicial review as hereinafter provided.

(c) To request from the State's attorney, State Police, county or municipal police departments such investigation and data as will enable the Board to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury.

(d) To hear and determine all claims for awards filed with the Board pursuant to this article, and to reinvestigate or reopen cases as the Board deems necessary.

(e) To direct medical examination of victims.

(f) To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summons requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Board to any member or employee thereof. A summons issued under this subsection shall be regulated by the Maryland Rules of Procedure.

(g) To take or cause to be taken affidavits or depositions within or without the State.

(h) Subject to Article 40, § 51 of the Code, to render each year to the Governor, to the Secretary of Public Safety and Correctional Services, and to the General Assembly a written report of its activities.

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§ 5. Eligibility for awards.

(a) Except as provided in subsection (b) of this section, the following persons shall be eligible for awards pursuant to this article.

- (1) A victim of a crime;
- (2) A surviving spouse or child of a victim of a crime who died as a direct result of such crime; and
- (3) Any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime.

(4) Any person who is injured or killed while trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(5) A surviving spouse or child of any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(6) Any person dependent for his principal support upon any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

(7) Any person who is injured or killed while giving aid and assistance to a law-enforcement officer in the performance of his lawful duties or to a member of a fire department who is being obstructed from performing his lawful duties.

(b) A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.

§ 6. Filing of claims.

(a) A claim may be filed by a person eligible to receive an award, as provided in § 5 of this article, or if such person is under eighteen years of age, by his parent or guardian. In any case in which the person entitled to make a claim is mentally incompetent, the claim may be filed on his behalf by his guardian or such other individual authorized to administer his estate.

(b) A claim must be filed by the claimant not later than one hundred and eighty days after the occurrence of the crime upon which such claim is based, or not later than one hundred and eighty days after the death of the victim, provided, however, that upon good cause shown, the Board may extend that time for filing for a period not exceeding two years after such occurrence.

(c) Claims shall be filed in the office of the secretary of the Board in person or by mail. The secretary shall accept for filing all claims submitted by persons eligible under subsection (a) of this section and alleging the jurisdictional requirements set forth in this article and meeting the requirements as to form in the rules and regulations of the Board.

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(d) Upon filing of a claim pursuant to this article, the Board shall promptly notify the State's attorney of the county, or Baltimore City, as the case may be, wherein the crime is alleged to have occurred. If, within ten days after such notification, the State's attorney so notified advises the Board that a criminal prosecution is pending upon the same alleged crime, the Board shall defer all proceedings under this article until such time as such criminal prosecution has been concluded and shall so notify such State's attorney and the claimant. When such criminal prosecution has been concluded, the State's attorney shall promptly so notify the Board. Nothing in this section shall limit the authority of the Board to grant emergency awards as hereinafter provided: (1968, ch. 455, § 1; 1970, ch. 553; 1973, ch. 651, § 11.)

Stated in State Dep't of Assmts. & Taxation -- Md. 168, 384 A.2d 58 (1978).
v. Clark, 281 Md. 385, 380 A.2d 28 (1977); -- Cited in Holmes v. Criminal Injuries Comp.
Criminal Injuries Comp. Bd. v. Remson, 282 Md. 278, 359 A.2d 84 (1976).

§ 7. Minimum allowable claim.

No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars or has lost at least two continuous weeks' earnings or support. Out-of-pocket loss shall mean reimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. (1968, ch. 455, § 1.)

§ 8. Decisions on claims — By single Board member.

(a) A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the Board. All claims arising from the death of an individual as a direct result of a crime, shall be considered together by a single Board member.

(b) The Board member to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(c) Claims shall be investigated and determined, 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 responsibility or other legal exemption.

(d) The Board member to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the Board member is unable to decide the claim upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible.

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(e) After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the Board member to whom the claim was assigned shall make a decision either granting an award pursuant to § 12 of this article or deny the claim.

(f) The Board member making a decision shall file with the secretary a written report setting forth such decision and his reasons therefor. The secretary shall thereupon notify the claimant and furnish him a copy of such report, upon request. (1968, ch. 455, § 1.)

Effect of criminal prosecution. — The Criminal Injuries Compensation Act makes clear that a criminal prosecution is not necessary for the grant of an award, and that if there is a criminal prosecution, its outcome, no matter what it may be, is not per se determinative of whether a crime had been committed or of the identity of the person alleged to have committed it. Criminal Injuries Comp. Bd. v. Remson, 282 Md. 168, 384 A.2d 58 (1978).

When a claim is made under the Criminal Injuries Compensation Act, the Board, through its own investigation and review, which it is required to make, must establish the corpus

delicti and, where material, the criminal agents of the crime on which the claim is bottomed. It does this irrespective of the result of any criminal prosecution; the results of a criminal prosecution have probative value in the Board's determinations of the commission of a crime and criminal agency but are not conclusive. Criminal Injuries Comp. Bd. v. Remson, 282 Md. 168, 384 A.2d 58 (1978).

Applied in Criminal Injuries Comp. Bd. v. Gould, 273 Md. 486, 331 A.2d 55 (1975).

Stated in State Dep't of Assmts. & Taxation v. Clark, 281 Md. 385, 380 A.2d 28 (1977).

Cited in Holmes v. Criminal Injuries Comp. Bd., 278 Md. 60, 359 A.2d 84 (1976).

§ 9. Same — By full Board.

(a) The claimant may, within thirty days after receipt of the report of the Board member to whom his claim was assigned, make an application in writing to the Board for consideration of the decision by the full Board.

(b) Upon receipt of an application pursuant to subsection (a) of this section or upon its own motion, the Board shall review the record and affirm or modify the decision of the Board member to whom the claim was assigned. The action of the Board in affirming or modifying such decision shall be final. If the Board receives no application pursuant to subsection (a) of this section or takes no action upon its own motion the decision of the Board member to whom the claim was assigned shall become the final decision of the Board.

(c) The secretary of the Board shall promptly notify the claimant, the Secretary of Public Safety and Correctional Services, the Attorney General and the Comptroller of the final decision of the Board and furnish each with a copy of the report setting forth the decision. (1968, ch. 455, § 1; 1970, ch. 401, § 3.)

(a) Within thirty days after receipt of the copy of the report containing the final decision of the Board, the Attorney General may, if in his judgment or in the judgment of the Secretary of Public Safety and Correctional Services the award is improper, commence a proceeding in the circuit court of the county to review the decision of the Board. Any such proceeding shall be heard in a summary manner and shall have precedence over all other civil cases in such court. The court may, however, take additional testimony, if it so desires. There shall be no other judicial review of any decision made or action taken by the Board, by a member of the Board or by the secretary of the Board with respect to any claim.

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(b) Any such proceeding shall be commenced by the service of notice thereof upon the claimant and the Board in person or by mail.

(c) Within 30 days of the final decision of the Board, any claimant aggrieved by the final decision may appeal the decision under the applicable provisions of the Administrative Procedure Act, Article 41, §§ 255 and 256 of the Code.

§ 11. Emergency awards.

Notwithstanding the provisions of §§ 6 and 8 of this article, if it appears to the Board member to whom a claim is assigned, prior to taking action upon the claim, that (a) the claim is one with respect to which an award probably will be made, and (b) undue hardship will result to the claimant if immediate payment is not made, the Board member may make an emergency award to the claimant pending a final decision in the case. However, (1) the amount of the emergency award shall not exceed \$1,000, (2) the amount of the emergency award shall be deducted from any final award made to the claimant, and (3) the excess of the amount of the emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the Board. (1968, ch. 455, § 1; 1979, ch. 336.)

Effect of amendment. — The 1979 sentence and made style changes throughout amendment, effective July 1, 1979, divided the section into two sentences, substituted "\$1,000" for "five hundred dollars" in the present second sentence. Cited in Criminal Injuries Comp. Bd. v. Gould, 273 Md. 486, 331 A.2d 55 (1975).

§ 12. Prerequisites to award; amount; appointment; reduction or denial.

(a) (1) No award shall be made unless the Board or Board members, as the case may be, finds that (1) a crime was committed, (2) such crime directly resulted in personal physical injury to or death of the victim, and (3) police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight hours after the occurrence of such crime unless the Board, for good cause shown, finds the delay to have been justified. The Board, upon finding that any claimant or award recipient has not fully cooperated with all law enforcement agencies, may deny or withdraw any award, as the case may be.

(2) An award may not be made unless funds are appropriated and available for the full amount of the award. If a multiyear award is made, the total amount of the award shall be obligated and held for such period of time as is necessary to complete payment in accordance with the provisions of the award.

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If payment of the award is terminated for any reason subsequent to June 30 of the fiscal year in which the award was made, the remainder of the award shall revert to the general fund.

(b) Any award made pursuant to this article shall be made in accordance with the schedule of benefits and degree of disability as specified in Article 101, § 36 (as it existed on July 1, 1974), § 37, and other applicable sections of the Code, excluding § 66 entitled "Subsequent Injury Fund." However, the term "average weekly wages" as applied to determine the award in accordance with § 36 of Article 101, does not include tips, gratuities and wages that are undeclared on the claimant's State or federal income tax returns in the applicable years. If a claimant does not have "average weekly wages" so as to qualify under the formula in § 36 of Article 101, the award shall be in an amount equal to the arithmetic average between the maximum and minimum awards listed in the applicable portion of that section.

(c) If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned among the claimants.

(d) Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received as a result of the injury (1) from or on behalf of the person who committed the crime, (2) from any other public or private source, including an award of the Workmen's Compensation Commission under Article 101, (3) as an emergency award pursuant to § 11 of this article.

(e) In determining the amount of an award, the Board or Board members, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the Board or Board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the Board or Board member, as the case may be, may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility 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.

(f)(1) If the Board or Board member, as the case may be, finds that the claimant will not suffer serious financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance pursuant to this article to meet the loss of earnings, support, or out-of-pocket expenses, the Board or Board members shall deny an award. In determining the serious financial hardship, the Board or Board member shall consider all of the financial resources of the claimant. Unless total dependency is established, a family is considered to be partially dependent on a mother with whom they reside without regard to actual earnings.

(2) The conditions of paragraph (1) of this subsection shall not apply in determining an award under paragraphs (4), (5), and (6) of § 5 (a) of this article.

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§ 13. Manner of payment of award; execution or attachment.

Any award made under this article shall be paid in accordance with the discretion and decision of the Board as to the manner of payment. No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. In every case providing for compensation to an employee or his dependent under this article, the Board may, if in its opinion the facts and circumstances of the case warrant it, convert the compensation to be paid in a partial or total lump sum; without discount. (1968, ch. 455, § 1; 1973, ch. 563.)

§ 14. Confidentiality of records.

The record of a proceeding before the Board or a Board member shall be a public record; provided, however, 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 such law or regulation. (1968, ch. 455, § 1.)

§ 15. Subrogation.

Acceptance of an award made pursuant to this article shall subrogate the State, to the extent of such award, to any right or right of action occurring to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made. (1968, ch. 455, § 1.)

§ 16. Penalty.

Any person who asserts a false claim under the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than \$500 or one year imprisonment or both, and shall further forfeit any benefit received and shall reimburse and repay the State for payments received or paid on his behalf pursuant to any of the provisions hereunder. (1968, ch. 455, § 1.)

§ 17. Additional costs to be imposed in criminal cases.

Where any person is convicted after July 1, 1982, of any crime by any judge with criminal jurisdiction, there shall be imposed as additional cost, in the case, in addition to any other costs required to be imposed by law, the sum of \$15. All such sums shall be paid over to the Comptroller of the State to be deposited in the general funds of the State. Under no condition shall a political subdivision be held liable for the payment of this sum of \$15. "Crime" as used in this section does not include violations of the Maryland Vehicle Law, violations of the Agriculture or Natural Resources articles of this Code, or violations of State or local building, health, and sanitation codes.

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Article 27

§ 637. Execution against convict's property for restitution to party injured.

In all cases where restitution or reparation is adjudged to be made to the party injured and immediate restitution or reparation is not fully made, the court before whom the offender is convicted shall either issue execution against the property of the convicted person in the name of the person injured for the value of the property taken, or so much thereof as is not restored, the value to be estimated by the court, or order restitution in an amount not to exceed 20 percent of any earnings less other deductions required by law to be paid out of any funds earned by the defendant under a "work release" plan. The provisions of this section may not deprive the party injured from having and maintaining a civil action against the offender, either before or after conviction, or against any other person, for the recovery of the money received or property taken, or the value thereof. (An. Code, 1951, § 723; 1939, § 678; 1924, § 575; 1912, § 518;

* * *

§ 640. Restitution for crimes.

(a) *Definitions.* — In this subtitle, the following words have the meanings indicated, unless the context of their use indicates otherwise.

(1) "*Court*" means the Court of Appeals, Court of Special Appeals, circuit court, and District Court of Maryland, or any of them, unless the context clearly requires a contrary meaning.

(2) "*Crime*" means an act committed by any person in the State of Maryland which would constitute a crime as defined in Article 27 of the Annotated Code of Maryland or at common law. However, an act involving the operation of a motor vehicle which results in injury does not constitute a crime for the purpose of this article unless the injuries were intentionally inflicted through the use of a vehicle.

(3) "*Defendant*" means any person who has been found guilty of a crime or any person whose plea of nolo contendere to a crime has been accepted by the court.

(4) "*Division*" means Division of Parole and Probation.

(5) "*Judge*" means a judge of a court.

(6) "*Property*" means both real and personal property.

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(b) *Restitution upon conviction of crime; priority of payment.* — (1) On conviction of a crime, the court may order the defendant to make restitution in addition to any other penalty for the commission of the crime, if:

(i) Property of the victim was stolen, converted, unlawfully obtained, or its value substantially decreased as a direct result of the crime;

(ii) The victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earnings as a direct result of the crime; or

(iii) The victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental entity.

(2) The court may order that restitution be made to:

(i) The victim;

(ii) The Department of Health and Mental Hygiene or other governmental entity; or

(iii) A third-party payor, including an insurer, which has made payment to the victim to compensate the victim for a property loss under paragraph (1)(i) of this subsection, or pecuniary loss under paragraph (1)(ii) of this subsection.

(3) If the victim has been fully compensated for the victim's loss by a third-party payor, the court may order restitution to the third-party payor. Otherwise, payment of restitution to the victim has priority over payment of restitution to the third-party payor.

(4) Payment of restitution to the victim under this subsection has priority over payment of restitution to the Department of Health and Mental Hygiene or other governmental entity.

(c) *Sentence or condition of probation or parole.* — When an order of restitution has been entered pursuant to subsection (b), compliance with the order may be made as a sentence or condition of probation or parole.

(1) *Administration.* — (1) Restitution is made by the defendant to the division of parole and probation of the county in which he was convicted under the terms and conditions of the order for restitution.

(2) The Division shall keep records of any payments or return of property satisfaction of the order.

(3) The Division shall forward any property or payments in accordance with the court's order and the provisions of this section to:

(i) The victim;

(ii) The Department of Health and Mental Hygiene or other governmental entity; or

(iii) The third-party payor.

(4) The Division may assess additional fees not to exceed 2 percent of the amount of the order to pay for administrative costs of collecting payments or property. These fees shall be paid by the defendant.

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(e) *Failure to make restitution.* — When a defendant fails to make restitution as ordered, the Division shall notify the court. The court may hold a hearing to determine if the defendant is in contempt of court or has violated the terms of the probation or parole.

(f) *Civil action not precluded.* — An order of restitution may not preclude the owner of the property or the victim who suffered personal physical or mental injury or out of pocket loss of earnings or support from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced

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§ 641. Probation prior to judgment; power of court to provide terms and conditions; intoxicated drivers; violation of probation; fulfillment of terms of probation.

(a) *Probation after plea or finding of guilt; power of court to provide terms and conditions; waiver of right to appeal from judgment of guilt.* — (1) (i) Whenever a person accused of a crime pleads guilty or nolo contendere or is found guilty of an offense, a court exercising criminal jurisdiction, if satisfied that the best interests of the person and the welfare of the people of the State would be served thereby, and with the written consent of the person after determination of guilt or acceptance of a nolo contendere plea, may stay the entering of judgment, defer further proceedings, and place the person on probation subject to reasonable terms and conditions as appropriate. The terms and conditions may include ordering the person to pay a fine or pecuniary penalty to the State, or to make restitution, but before the court orders a fine, pecuniary penalty, or restitution the person is entitled to notice and a hearing to determine the amount of the fine, pecuniary penalty, or restitution, what payment will be required, and how payment will be made. The terms and conditions also may include any type of rehabilitation program or clinic, or similar program, or the parks program or voluntary hospital program.

(ii) However, when the offense for which the judgment is being stayed is for violation of § 21-902 (a) or (b) of the Transportation Article, the court shall impose a period of probation and as a condition thereof require the person to participate in an alcohol treatment or education program approved by the Administrative Office of the Courts as a condition of the probation, unless the court finds and affirmatively states on the record that the interests of the person and the people of the State do not require the imposition of this condition.

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§ 641A. Suspension of sentence and probation by court having jurisdiction; period of probation; probation when offense punishable by fine and imprisonment; limiting probation; revoking or modifying condition of probation; commencement of probation on release as condition of probation.

(a) *Suspension of sentence; probation.* — Upon entering a judgment of conviction, the court having jurisdiction may suspend the imposition or execution of sentence and place the defendant on probation upon such terms and conditions as the court deems proper. The court may impose a sentence for a specified period and provide that a lesser period be served in confinement, suspend the remainder of the sentence and grant probation for a period longer than the sentence but not in excess of 5 years. However, if the defendant consents in writing, the court may grant probation in excess of 5 years, but only for purposes of making restitution.

(b) *Probation when offense punishable by fine and imprisonment; limitation, revocation or modification.* — Probation may be granted whether the offense is punishable by fine or imprisonment or both. If the offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to the imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment. The court may revoke or modify any condition of probation or may reduce the period of probation.

(c) *Commencement of probation on date of release as condition.* — If a sentence of imprisonment is imposed, a portion of it is suspended, and the defendant is placed on probation, the court may impose as a condition of probation

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§ 9-202. Compensation.

(a) *In general.* — Except as provided in subsections (b) and (c), a witness attending court is allowed \$1 for each day in attendance plus itinerant charges allowable to witnesses from other principal county subdivisions. Each witness shall obtain from the clerk of court a certificate or order showing the amount due and by whom payable. The certificate or order must be obtained within 30 days of the last day of attendance, and failure to do so constitutes a waiver of any claim for compensation.

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(b) *Exceptions.* — (1) In Dorchester, Somerset, Talbot, and Worcester counties a witness is allowed 75 cents per day.

(2) In Baltimore City a witness is allowed 50 cents per day.

(c) *Itinerant allowances.* — (1) Allegany County — A witness is allowed 12 cents per mile for each mile over three he resides from the court. This amount is allowed only once in one term. A witness attending court is allowed \$5 for each day in attendance plus itinerant charges allowable to witnesses from other counties.

(2) Baltimore City—A witness who resides outside the city limits is allowed itinerant charges.

(3) Caroline County—A witness is allowed 5 cents per mile for each mile over three he resides from Denton.

(4) Dorchester County—A witness is allowed 5 cents per mile for each mile he resides from the court. This amount is allowed only once in one term.

(5) Frederick County—A witness is allowed 10 cents per mile for each mile over ten he resides from Frederick City. This amount is allowed only once in one case.

(6) Garrett County—A witness is allowed 12 cents per mile for each mile over three he resides from the court. A witness attending court is allowed \$5 for each day in attendance plus itinerant charges allowable to witnesses from other principal county subdivisions.

(7) Kent County—A witness is allowed whatever amount the court may direct.

(8) Somerset County—A witness is allowed 4 cents per mile for each mile he resides from the court.

(9) Talbot County—A witness is allowed 5 cents per mile for each mile he resides from the court.

(10) Washington County—A witness is allowed 8 cents per mile for each mile over ten he resides from the court. This amount is allowed only once in one case.

(11) Worcester County—A witness is allowed 4 cents per mile for each mile he resides from the court.

(d) *Witness summoned by surveyor.* — A witness summoned by a surveyor upon an order shall be paid in the same manner as any other witness. (An. Code

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Article 27

§ 27. Intimidating or corrupting jurors, etc.; obstructing justice.

If any person by corrupt means or by threats or force endeavors to influence, intimidate, or impede any juror, witness, or court officer of any court of this State in the discharge of his duty, or by corrupt means or by threats or force obstructs, impedes, or endeavors to obstruct or impede the due administration of justice therein, he is liable to be prosecuted, and on conviction to be punished by fine not exceeding \$10,000, or by imprisonment not exceeding 3 years, or both, according to the nature and aggravation of the offense. (An. Code, 1951, § 33; 1939, § 30; 1924, § 33; 1912, § 30; 1904, § 28; 1888, § 25; 1853, ch. 450, § 2; 1972, ch. 555; 1981, ch. 274.)

Effect of amendment. — The 1981 amendment, effective July 1, 1981, rewrote the section.

Common law. — Obstruction of justice was an indictable offense at common law. *Food Fair Stores, Inc. v. Joy*, 283 Md. 205, 389 A.2d 874 (1978).

This section is in aid and definition of class of criminal acts which are known to the

common law as obstructions of justice. *Romans v. State*, 178 Md. 588, 16 A.2d 642 (1940), cert. denied, 312 U.S. 695, 61 S. Ct. 732, 85 L. Ed. 1131 (1941).

Words of this section are general and embrace in comprehensive terms various forms of obstruction. *Romans v. State*, 178 Md. 588, 16 A.2d 642 (1940), cert. denied, 312 U.S. 695, 61 S. Ct. 732, 85 L. Ed. 1131 (1941).

§ 124. Supervision of suspended sentences; presentence reports and other investigations and probationary services.

(a) Whenever any court shall suspend the sentence of any person convicted of crime, and shall direct such person, to continue, for a certain time, or until otherwise ordered, under the supervision of the Division, it shall be the duty of the said Division to supervise, when so requested by said court, the conduct of such person and to ascertain and report to said court whether or not the conditions of such probation or suspension of sentence are being faithfully complied with by such person.

(b) The parole and probation agents of the Division shall provide the judge of the court with presentence reports or other investigations in all cases when requested by any judge. The presentence reports are confidential and not available for public inspection except upon court order. However, presentence reports shall be made available, upon request, to the defendant's attorney, the State's attorney, a correctional institution, a parole or probation, or pretrial release official of this State, any other state, the United States, or the District

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of Columbia, and a public or private mental health facility in any of those jurisdictions, if the individual who is the subject of the report has been committed or is being evaluated for commitment to the facility for treatment as a condition of probation. The agents shall also perform any other probationary services the judges may from time to time request.

(c) (1) Prior to the sentence by the circuit court of any county to the jurisdiction of the Division of Correction of a defendant convicted of a felony, or a misdemeanor which resulted in serious physical injury or death to the victim, or the referral of any defendant to the Patuxent Institution, a presentence investigation shall be completed by the Division of Parole and Probation and considered by the court, unless the court specifically orders to the contrary in a particular case.

(2) (i) The presentence investigation shall include a victim impact statement, if:

1. The defendant, in committing a felony, caused physical, psychological, or economic injury to the victim; or

2. The defendant, in committing a misdemeanor, caused serious physical injury or death to the victim.

(ii) If the court does not order a presentence investigation, the State's attorney may prepare a victim impact statement to be submitted to the court and the defendant in accordance with the Maryland Rules of Procedure pertaining to presentence investigations.

(iii) The court shall consider the victim impact statement in determining the appropriate sentence, and in entering any order of restitution to the victim under Article 27, § 640 (c) of the Code.

(3) A victim impact statement shall:

(i) Identify the victim of the offense;

(ii) Itemize any economic loss suffered by the victim as a result of the offense;

(iii) Identify any physical injury suffered by the victim as a result of the offense along with its seriousness and permanence;

(iv) Describe any change in the victim's personal welfare or familial relationships as a result of the offense;

(v) Identify any request for psychological services initiated by the victim or the victim's family as a result of the offense; and

(vi) Contain any other information related to the impact of the offense upon the victim that the court requires.

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§ 551. Issuance; contents; time of search, etc.; disposition of property seized.

(b) If the criminal case in which property of a person was seized pursuant to a search warrant issued under subsection (a) of this section is disposed of because of (i) an entry of nolle prosequi, (ii) dismissal, or (iii) acquittal, or if the State does not appeal such a criminal case or if the time for appeal has expired, all property of the person, except contraband or any property prohibited by law from being recoverable, may be returned to the person to whom it belongs without the necessity of that person instituting an action for replevin or any other legal proceeding against the agency having custody of the property.

(c) (1) If, at any time, on application to a judge of the circuit court of any county or of the Criminal Court of Baltimore City or judge of the District Court, it is found that property rightfully taken under a search warrant is being wrongfully withheld after there is no further need for retention of the property, the judge must cause it to be restored to the person from whom it was taken.

(2) In the discretion of the judge, an oral motion made in open court may be received at any time making application for the return of seized property if the application for return is based on the grounds that the property, although rightfully taken under a search warrant, is being wrongfully withheld after there is no further need for retention of the property. If the judge grants the oral motion, the order of the court shall be in writing and a copy of the order shall be sent to the State's attorney.

(3) If the judge rejects the proffer of an oral motion and requires the person from whom the property was taken to proceed for return of the seized property by petition and an order to show cause to the authority wrongfully withholding the property and it is subsequently ordered that the property be restored to the person from whom it was taken, court costs shall not be assessed against the petitioner.

Maryland Health-General Code

§ 15-127. Victim of alleged rape or sexual offense.

(a) *Examination without charge to victim.* — If a physician or a hospital provides any physical examination of a victim of an alleged rape or sexual offense to gather information and evidence as to the alleged crime, these services shall be provided without charge to the individual.

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(b) *Payment by Department.* — The physician or hospital is entitled to be paid by the Department for the costs of providing these services. (An. Code

Article 88A

§ 130. Rape crisis programs.

(a) *Legislative findings and declaration; intent of section.* — (1) The General Assembly finds and declares that an increasing number of rape and sexual offense victims in Maryland do not have access to necessary counseling and follow-up services. The General Assembly further finds that several areas of the State have extremely limited support services to assist an alleged victim of rape and other sexual offenses.

(2) The intention of this section is to provide for rape crisis programs which will serve to address the special needs of a rape victim.

(b) *Department to assist in program establishment.* — (1) The Department of Human Resources shall assist in the establishment of rape crisis programs in this State.

(2) The programs shall be developed and located in areas of the State to facilitate the use of the program by alleged victims residing in the surrounding area.

(3) The programs shall provide specialized support services to the alleged victims of rape and sexual offenses.

(4) The programs shall include a hotline and counseling service.

(c) *Authority of Department to contract with organizations to operate programs.* — The Department of Human Resources may enter into a contract with public or private nonprofit organizations to operate the programs.

(d) *Funding.* — Funds for the programs shall be as provided in the annual State budget and shall be used to supplement, but not supplant, funds that the programs receive from other sources.

(e) *Annual report to General Assembly.* — The annual report of the Secretary to the General Assembly shall include a report on the rape crisis program.

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Article 27

§ 11F. Spousal assault.

(a) *Assistance to victim.* — Any person who alleges to have been a victim of spousal assault and who believes there is a danger of serious and immediate injury to himself or herself may request the assistance of a local law enforcement agency. A local law enforcement officer responding to the request for assistance shall:

(1) Protect the complainant from harm when responding to the request; and

(2) Accompany the complainant to the family home so that the complainant may remove his or her personal clothing and effects and also the personal clothing and effects of any children that may be in the care of the complainant. The personal effects to be removed shall be only those required for immediate needs.

(b) *Immunity of law enforcement officer from civil liability.* — Any law enforcement officer responding to such a request shall be immune from civil liability in complying with the request as long as the officer acts in good faith and in a reasonable manner. (1979, ch. 307; 1980, ch. 712, § 2.)

Courts and Judicial Proceedings Code

§ 4-501. Definitions.

(a) *In general.* — In this subtitle the following words have the meanings indicated.

(b) *Abuse.* — "Abuse" means one or more of the following acts between household members:

(1) To cause serious bodily harm;

(2) To place another in fear of imminent serious bodily harm; or

(3) To sexually abuse a child, as defined by Article 27, § 35A (b) 8.

(c) *Court.* — "Court" means the District Court or a circuit court in this State.

(d) *Family home.* — "Family home" is the property in this State that:

(1) Is the principal residence of the household members; and

(2) At the time of the proceeding is owned, rented, or leased by at least one of the household members.

(e) *Household members.* — "Household members" means spouses, parents, children, or other persons related to one another by consanguinity who resided together at the time of the act of abuse. (1980, ch. 887; 1981, ch. 584, § 1.)

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§ 4-502. Petition.

(a) *Filing.* — A household member may seek relief by filing a petition with the court alleging abuse by another household member.

(b) *Oath; information as to other action.* — The petition shall be under oath and shall contain information known to the petitioner of any prior or pending action between the parties in any court.

(c) *Costs.* — (1) The cost of filing the petition may be waived or deferred by the court in advance on a showing by affidavit that the petitioner is:

(i) Indigent; or

(ii) That because of the circumstances the petitioner otherwise able to pay, is unable to pay the cost at the time of filing.

(2) Under these circumstances, costs may be subsequently waived or assessed against the petitioner or the abusing household member. (1980, ch. 887; 1981, ch. 584, § 1.)

Effect of amendment. — The 1981 amendment, effective July 1, 1981, reenacted the section without change.

§ 4-503. Orders.

(a) *Temporary ex parte order; hearing.* — (1) If a petition is filed under this subtitle and the court determines that the petitioner has demonstrated an abuse of a household member, the court may enter a temporary ex parte order to protect the petitioner or another household member from abuse. The order shall be served immediately by a law enforcement officer on the household member named in the petition, and that household member shall have an opportunity to be heard on the question of continuing the temporary order. Notice of the date of the hearing shall be contained in the order, and this hearing shall be held not later than 5 days after service of the order on the household member.

(2) If the household member named in the petition is served a temporary ex parte order under subsection (a) of this section and fails to appear for a hearing on the question of continuing the temporary order, the temporary order may be continued for up to 15 days.

(b) *Order granting relief.* — If the court determines by clear and convincing evidence that the alleged abuse has occurred, the court may grant a protective order to stop the abuse of the household member. The relief granted may include the following:

(1) An order to refrain from abusing household members;

(2) An order to require the respondent to vacate the family home immediately and grant temporary possession of the family home to the petitioner on service of the ex parte order for up to 5 days. Any extensions to be ordered to vacate the family home and grant temporary possession of it to the petitioner, granted for good cause shown, may not exceed a total period of 15 days;

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(3) An award of temporary custody of a minor; and

(4) An order directing any or all of the household members to participate in a professionally supervised counseling program.

(c) *Statement of penalty for violation.* — An order issued under this subtitle shall state that a violation of the order could result in a finding of contempt, criminal prosecution, and incarceration. (1980, ch. 887; 1981, ch. 584, § 1; 1982, chs. 843, 905.)

§ 4-504. Same — Service.

(a) *Service upon all parties.* — A copy of any order shall be served upon all parties to the proceedings, and the appropriate law enforcement agency.

(b) *Immediate service; reissuance of order.* — The judge who issues the order:

(1) May:

(i) Direct immediate service; and

(ii) Reissue the order until service is effective; but

(2) May not reissue the order more than 15 days from the date of the initial appearance of the petitioner.

(c) *Return of service.* — Return of service shall be filed with the court. (1980, ch. 887; 1981, ch. 584, § 1; 1982, ch. 905.)

Effect of amendments. — The 1981 amendment, effective July 1, 1981, added the second sentence.

The 1982 amendment, effective July 1, 1982, designated the former first sentence in the section as subsection (a) and the former last sentence in the section as the introductory language in subsection (b), added paragraphs (1) and (2) of that subsection and added subsection (c).

§ 4-505. Same — Penalty for violation.

Any person who violates an order to vacate the family home under this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 60 days, or both. (1980, ch. 887; 1981, ch. 584, §§ 2, 3.)

Editor's note. — Section 2, ch. 584, Acts 1981, repealed former § 4-505. Section 3 of ch. 584 enacted present § 4-505 and § 4 of ch. 584 provides that the act shall take effect July 1, 1981.

§ 4-506. Relief not affected by leaving home; other remedies not precluded.

(a) A petitioner's right to relief under this subtitle is not affected by the petitioner leaving the family home to avoid further abuse.

(b) A proceeding under this subtitle does not limit or preclude any other available legal remedies. (1980, ch. 887.)

Category	Citation
1. Victim Compensation Program	258A-1 et seq.
1.1 Responsible Agency	258A-2
1.2 Eligible Claimants	258A-3
1.3 Losses Covered	258A-5
1.4 Minimum and Maximum Award	258A-5
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	258A-5
1.7 Filing of Claim - Time Limit	258A-4
1.8 Emergency Award	
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	276-92
3. Escrow and Forfeiture of Offender Profits	258A-8
4. Witness Fees	262-29
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	268-13B
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	127-133A (for offenders serving life sentence)
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	27-133A
8.5 Testimony at Parole Hearing	27-133A
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	135-7 et seq.; 266-48 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	265.19; 266-25 (larceny from elderly)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	19A-14, 19A-15
12.4 Abuse, Neglect, Exploitation - Protective Services	19A-16 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	123A-10 (Dept. of Mental Health facilities available to sexual assault victims)
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	209A-1 et seq.
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	19A-26 (statistics on elder abuse)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	19A-23 (records re elder abuse)
15.4 Sexual Assault Counselor Privilege	

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Massachusetts General Laws Annotated (West)

CHAPTER 258A. COMPENSATION OF VICTIMS OF VIOLENT CRIMES

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| <p>Sec.</p> <ol style="list-style-type: none"> 1. Definitions. 2. Jurisdiction; disqualification of judge; failure of claimant to prosecute. 3. Eligibility for compensation. 4. Filing and proof of claims. 5. Compensation; restrictions. | <p>Sec.</p> <ol style="list-style-type: none"> 6. Determination of amount of compensation; decisions. 7. Subrogation. 8. Proceeds received by criminals as result of commission of crime; distribution to victims. |
|--|---|

Chapter 258A of the General Laws was added by St.1967, c. 852, § 1, effective July 1, 1968.

Law Review Commentaries

Compensation of victims of violent crimes, 15 Annual Survey of Mass. Law, Boston College, p. 117 (1968).

Massachusetts Compensation of Victims of Violent Crime Law. Samuel A. Vitali (1970) 4 Suffolk U.L.Rev. 237.

Massachusetts' plan to aid victims of crime. Glenn Eldon Floyd (1968) 48 Boston U.L.Rev. 360.

Scores of victims, years of neglect: Compensation for victims of violent crimes. (1981) 16 New England L.Rev. 45.

§ 1. Definitions

The following words as used in this chapter shall have the following meanings, unless the context requires otherwise:

"Crime", an act committed in the commonwealth which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or defense, would constitute a crime; provided that such act involves the application of force or violence or the threat of force or violence by the offender upon the victim; and provided, further, that no act involving the operation of a motor vehicle which results in injury to another shall constitute a crime for the purpose of this chapter unless such injury was intentionally inflicted through the use of a motor vehicle.

"Dependent", mother, father, spouse, spouse's mother, spouse's father, child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly or partially dependent for support upon and living with the victim at the time of his injury or death due to a crime alleged in a claim pursuant to this chapter.

"Family", the spouse, parent, grandparent, step-mother, step-father, child, grandchild, brother, sister, half-brother, half-sister, adopted children of parent, or spouse's parents of the offender.

"Offender", a person who commits a crime.

"Victim", a person who suffers personal injury or death as a direct result of a crime.

Added by St.1967, c. 852, § 1.

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1967 Enactment. St.1967, c. 852, was approved Jan. 2, 1968.

Section 4 of St.1967, c. 852, provided that chapter 258A should take effect July 1, 1968, and be applicable only to victims of crimes committed on or after said date.

Law Review Commentaries

Victim compensation plans. (1969) 55 A.B.A.J. 159.

Library References

Criminal Law ¶1220.

C.J.S. Criminal Law § 2007.

Notes of Decisions

In general- 1
Dependents 2

1. In general

In view of fact that Commonwealth has provided a means of compensation for losses incurred by victims of violent crime through this chapter it was proper for trial court to dismiss as to the Commonwealth complaint by executrix of estate of party who was killed by two juvenile escapees from custody of Department of Youth Services. Piotti v. Com. (1976) 348 N.E.2d 425, 370 Mass. 386.

This chapter providing for compensation of victims of violent crimes clearly covers the loss of future support when a victim of a violent crime is injured, and there is no logical reason for treating the victim's death other than as a permanent loss of support to be computed on the basis of life expectancy evidence and actuarial tables in determining the victim's future loss of earning capacity. Gurley v. Com. (1973) 296 N.E.2d 477, 363 Mass. 595.

§ 2. Jurisdiction; disqualification of judge; failure of claimant to prosecute

The district courts of the commonwealth shall, pursuant to the provisions of this chapter, have jurisdiction to determine and award compensation to victims of crimes.

Such claims shall be brought in a district court within the territorial jurisdiction in which the claimant lives. A judge who has heard a criminal case in which the crime alleged as the basis of such claim shall not sit in determination of such claim. A judge who has heard such a claim shall not sit in a criminal case arising from a crime alleged in such claim. Failure to prosecute, or to prosecute successfully an offender in a criminal case, shall not in

Both trial and reviewing courts must follow the specific procedures established by this chapter relating to compensation of victims of violent crimes, and their decisions cannot be based on or affected by judicial speculation as to whether the legislature will appropriate sufficient funds to meet the obligations it has voluntarily undertaken by enacting the statute. Id.

Rights of recovery established by the Commonwealth cannot be extended beyond those expressly conferred by this chapter relating to compensation of victims of violent crimes. Id.

Where the widow of the victim of a violent crime has received an excess of \$10,000 from insurance she cannot recover any compensation from the Commonwealth under M.G.L.A. c. 258A. Gurley v. Commonwealth of Massachusetts (1972) 49 Mass.App.Dec. 78.

2. Dependents

Petitioner, mother of a 27-year-old unmarried male who was the victim of homicide, did not raise appellate challenge to constitutionality of provisions of this chapter purporting to disqualify her from receiving compensation because she was not living with the victim at the time of death even though she was partially dependent upon him for her support where petitioner did not raise issue at trial and since the issue was not reported to the Appellate Division by the trial judge. Landrum v. Com. of Mass., 1981 Mass.App.Div. 6.

Homicide victim's child was a "dependent" within meaning of this section despite fact that "unreported income" of the victim, contrary to rules and regulations of the department of public welfare, was used to provide support for the child. Walter v. Com. of Mass., 1979 Mass.App.Div. 325.

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any way prejudice the claim of an eligible claimant unless such failure is due to the provocation of the offender by the victim.

Added by St.1967, c. 852, § 1.

Library References

Criminal Law ¶ 1220.
C.J.S. Criminal Law § 2007.

§ 3. Eligibility for compensation

Except as hereinafter provided, the following persons shall be eligible for compensation pursuant to this chapter:

- (a) a victim of a crime;
- (b) in the case of the death of the victim as a direct result of the crime, a dependent of the victim.

An offender or an accomplice of an offender or, except in the case of rape, a member of the family of the offender or a person maintaining sexual relations with the offender shall not be eligible to receive compensation with respect to a crime committed by the offender.

Added by St.1967, c. 852, § 1. Amended by St.1980, c. 459, § 1.

1980 Amendment. St.1980, c. 459, § 1, in the second paragraph, inserted "or, except in the case of rape" and deleted "a person living with the offender" following "family of the offender" and substituted "not" for "in no case".

St.1980, c. 459, was approved July 10, 1980. Emergency declaration by the Governor was filed July 11, 1980.

Law Review Commentaries

Scores of victims, years of neglect: Compensation for victims of violent crimes. (1981) 16 New England L.Rev. 45.

Library References

Criminal Law ¶ 1220.
C.J.S. Criminal Law § 2007.

§ 4. Filing and proof of claims

A claim for compensation may be filed by a person eligible for compensation or if he is a minor or is incompetent by his parent or guardian.

A claim shall be filed not later than one year after the occurrence of the crime upon which it is based, or not later than ninety days after the death of the victim whichever is earlier; provided, however, that upon good cause, the court may either before or after the expiration of said filing period extend the time for filing such claim.

Each claim shall be filed in the office of the clerk of the district court in person or by mail, and shall be accompanied by an entry fee of five dollars. Said clerk shall immediately notify the attorney general of the claim. Such notification shall be in writing, with copies of such material as is included in the claim or in support thereof. The attorney general shall investigate such claim, prior to the opening of formal court proceedings.

Notes of Decisions

1. In general

Petitioner, mother of a 27-year-old unmarried male who was the victim of homicide, did not raise appellate challenge to constitutionality of provisions of this chapter purporting to disqualify her from receiving compensation because she was not living with the victim at the time of death even though she was partially dependent upon him for her support where petitioner did not raise issue at trial and since the issue was not reported to the Appellate Division by the trial judge. *Landrum v. Com. of Mass.*, 1981 Mass.App.Div. 6.

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Said clerk of court shall notify the claimant and the attorney general of the date and time of any hearing on such claim.

The attorney general shall present any information he may have in support of or in opposition to the claim. The claimant may present evidence and testimony on his own behalf or may retain counsel. The court may, as part of any order entered under this chapter, determine and allow reasonable attorney's fees, which shall not exceed fifteen per cent of the amount awarded as compensation under this chapter, which fee shall be paid out of, but not in addition to, the amount of compensation, to the attorney representing the claimant. No attorney for the claimant shall ask for, contract for or receive any larger sum than the amount so allowed.

The person filing a claim shall, prior to any hearing thereon, submit reports, if available, from all hospitals, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the court, an examination of the injured victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the court may appoint a duly qualified impartial physician to make such examination and report.

Added by St.1967, c. 852, § 1.

Library References

Criminal Law ¶ 1220.
C.J.S. Criminal Law § 2007.

Notes of Decisions

1. In general

Where prosecutor unintentionally violated c. 12, § 30 by representing murder victim's widow in civil claim for compensation while prosecuting defendant for murder of victim's husband, defendant was entitled to new trial without any showing of actual prejudice. *Com. v. Tabor* (1978) 384 N.E.2d 190, 376 Mass. 811.

§ 5. Compensation; restrictions

No compensation shall be paid unless the claimant has incurred an out-of-pocket loss of at least one hundred dollars or has lost two continuous weeks of earnings or support. Out-of-pocket loss shall mean unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. In case of rape, out-of-pocket losses requiring compensation shall include counseling and emergency funds for housing but shall not include funds for abortion or funds for counseling for abortion. One hundred dollars shall be deducted from any award granted under this chapter.

No compensation shall be paid unless the court finds that a crime was committed, that such crime directly resulted in personal physical injury to, or the death of, the victim, and that police records show that such crime was promptly reported to the proper authorities. In no case may compensation be paid if the police records show that such report was made more than forty-eight hours after the occurrence of such crime, except in the case of rape, unless the court finds said report to the police to have been delayed for good cause.

Any compensation paid under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support resulting from such injury.

Any compensation for loss of earnings or support shall be in an amount equal to the actual loss sustained; provided, however, that no award under this chapter shall exceed ten thousand dollars. If two or more persons are entitled to compensation as a result of a death of a person which is the direct result of a crime, the compensation shall be apportioned by the court among the claimants in proportion to their loss.

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§ 6. Determination of amount of compensation; decisions

For the purpose of determining the amount of compensation payable pursuant to this chapter, the administrative justice for the district court department and the administrative justice for the Boston municipal court department, for the respective departments shall, insofar as practicable, formulate standards for the uniform application of this chapter. The court shall take into consideration the provisions of this chapter, the rates and amounts of compensation payable for injuries and death under other laws of the commonwealth and of the United States, excluding pain and suffering, and the availability of funds appropriated for the purpose of this chapter. All decisions of the court on claims heard under this chapter shall be in writing, setting forth the name of the claimant, the amount of compensation and the reasons for the decision. The clerk of the court shall immediately notify the claimant in writing of the decision and shall forward to the state treasurer a certified copy of the decision. The state treasurer without further authorization shall, subject to appropriation, pay the claimant the amount determined by the court.

Any compensation paid pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury (a) from or on behalf of the offender, (b) under insurance programs, or (c) from public funds.

In determining the amount of compensation payable, the court shall determine whether because of his conduct the victim contributed to the infliction of his injury; and the court shall reduce the amount of the compensation or deny the claim altogether, in accordance with such determination; provided, however, that the court may disregard the responsibility of the victim for his own injury where such responsibility was attributable to efforts by the victim to aid a victim, or 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.

§ 7. Subrogation

Acceptance of any compensation under this chapter shall subrogate the commonwealth, to the extent of such compensation paid, to any right or right of action accruing to the claimant or to the victim to recover payments on account of losses resulting from the crime with respect to which the compensation has been paid. The attorney general may enforce the subrogation, and he shall bring suit to recover from any person to whom compensation is paid, to the extent of the compensation actually paid under this chapter, any amount received by the claimant from any source exceeding the actual loss to the victim.

Added by St.1967, c. 852, § 1.

Library References

Subrogation — 26.

C.J.S. Subrogation § 9.

§ 8. Proceeds received by criminals as result of commission of crime; distribution to victims

Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the state treasurer any moneys which would otherwise, by terms of such contract, be owing to the person or his representatives. The treasurer shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such person, provided that such person is eventually convicted of the crime

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and provided, further, that such victim, within three years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.

The treasurer, at least once every six months for three years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in each county of the state advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section.

Upon disposition of charges favorable to any person convicted of committing a crime, or upon a showing by such person that three years have elapsed from the establishment of such escrow account and further that no actions are pending against such person pursuant to this section the treasurer shall immediately pay over any moneys in the escrow account to such person.

Notwithstanding any inconsistent provision of the civil practice law and rules with respect to, the timely bringing of an action, the three year period provided for in subdivision one of this act shall not begin to run until an escrow account has been established.

Notwithstanding the foregoing provisions of this section the board shall make payments from an escrow account to any person convicted of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

SECTION 1. Chapter 258A of the General Laws is hereby amended by adding the following section:-

Section 8. No person who in good faith provides or obtains or attempts to provide or obtain assistance for a victim of a crime as defined in section one shall be liable in a civil suit for damages as a result of his acts or omissions in providing or obtaining, or attempting to provide or obtain said assistance unless said acts or omissions constitute willful, wanton or reckless conduct.

* * *

Chapter 276

§ 92. Restitution or reparation to injured person through probation officer

If a person is placed on probation upon condition that he make restitution or reparation to the person injured by him in the commission of his offence, and payment is not made at once, the court may order that it shall be made to the probation officer, who shall give receipts for and keep record of all payments made to him, pay the money to the person injured and keep his receipt therefor, and notify the clerk of the court whenever the full amount of the money is received or paid in accordance with such order or with any modification thereof.

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Chapter 262

§ 29. Witness fees

The fees for attending as a witness before the general court, the supreme judicial court, the superior court, the land court, a probate court or court of insolvency, a district court, county commissioners, a trial justice, a referee, an arbitrator, the department of industrial accidents or the board of conciliation and arbitration, or on any other occasion for which no express provision is made, or allowed to persons, except the debtor, who are examined under section eighty-two of chapter two hundred and sixteen, unless fraudulent conduct is charged and proved against them, shall be six dollars a day, and ten cents a mile for travel out and home; provided, that if the witness has a usual place of business or employment in the city or town where the court trial or hearing is held, travel shall be reckoned out and to such place of business or employment, and not out and home. Each witness shall certify in writing the amount of his travel and attendance.

Any person who at the request of the attorney general or a district attorney, for the purpose of assisting him in the investigation of any matter within his jurisdiction, as such attorney general or district attorney, attends the attorney general at any place, or the office of such district attorney at a courthouse, shall receive the fees provided in the preceding paragraph for a witness attending the superior court and subject to the same provisions, except that the certificate required by the last sentence of said paragraph shall be accompanied by a voucher signed by the attorney general or the district attorney that such fees are due said person for his attendance as provided in this paragraph.

Expenses incurred by witnesses summonsed on behalf of a defendant determined to be indigent, as well as expenses incurred by witnesses summonsed on behalf of the commonwealth, as such expenses are determined in accordance with this section, shall be paid by the commonwealth after such witness has certified with the court the amount of his travel and attendance.

Chapter 268

§ 13B. Intimidation of witnesses, jurors and persons furnishing information in connection with criminal proceedings

Whoever, directly or indirectly, willfully endeavors by means of a gift, offer or promise of anything of value, or by misrepresentation, intimidation, force or threats of force, to influence, impede, obstruct, delay or otherwise interfere with any witness or juror in any stage of a trial or other criminal proceeding, or with any person furnishing information to a criminal investigator relating to a violation of a criminal statute of the commonwealth, and whoever injures any person or damages his property on account of the giving of such information to a criminal investigator or on account of testimony given at a trial or other criminal proceeding, shall be punished by imprisonment in the state prison for not more than five years, or in a jail or

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house of correction for not more than two and a half years, or by a fine of not more than five thousand dollars, or by both such imprisonment and fine.

As used in this section a "criminal investigator" shall mean an individual or a group of individuals lawfully authorized by a department or agency of the commonwealth or any political subdivision thereof to conduct, or engage in, an investigation of, or prosecution for, a violation of the laws of the commonwealth in the course of his official duties.

Chapter 127

§ 133A. Eligibility for parole; notice and hearing; parole permits; revision of terms and conditions; revocation; arrest

Every prisoner who is serving a sentence for life in a correctional institution of the commonwealth, except prisoners confined to the hospital at the Massachusetts Correctional Institution, Bridgewater, and except prisoners serving a life sentence for murder in the first degree, shall be eligible for parole, and the parole board shall, within sixty days before the expiration of fifteen years of such sentence, conduct a public hearing before the full membership.

Said board shall at least thirty days before such hearing notify in writing the attorney general, the district attorney in whose district sentence was imposed, the chief of police or head of the organized police department of the municipality in which the crime was committed and the victims of the crime for which sentence was imposed, and said officials and victims may appear in person or be represented or make written recommendations to the board, but failure of any or all of said officials to appear or make recommendations shall not delay the paroling procedure. If a victim is deceased at the time any parole hearing is scheduled on the said sentence under this chapter, the deceased victim may be represented by his relatives in the following order: mother, father, spouse, child, grandchild, brother or sister, niece or nephew.

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Chapter 135

§ 7. Disposition of property taken by police officers from persons under arrest

If property which has been stolen, lost, abandoned or taken from a person under arrest comes into the possession of a member of the police department of a city by virtue of his office, he shall deliver the same to the officer or member of the department designated by the rules thereof, and shall thereupon be relieved from further responsibility therefor. The officer or member to whom such property is so delivered shall give notice as provided in section one of chapter one hundred and thirty-four. The word "city" as used in this and the four following sections shall include town.

§ 8. Sale of unclaimed property in possession of police department at public auction; notice

If such property remains unclaimed in the possession of such police department or member thereof for one month and the owner thereof or his place of abode or business is unknown, or if the owner and his place of abode or business are known and the owner, after receipt by registered mail of a written notice from such department or member to take possession of said property, refuses or fails for a period of ten days following said receipt so to do, such department may sell the same, excepting money unclaimed, by public

auction, notice of the time and place of sale, with a description of the property to be sold, first being given by publishing the same once in each of three successive weeks in a newspaper published in such city. Any violation of the provisions of this section shall be punished by a fine of not less than fifty nor more than one hundred dollars and by forfeiture of any such property obtained as a result of such violation.

Chapter 266

§ 48. Stolen goods; duty of arresting officers to secure

An officer who arrests a person charged as principal or accessory in a robbery or larceny shall secure the property which is alleged to have been stolen, annex a schedule thereof to his return and be answerable for the same; and, upon conviction of the offender, it shall be restored to the owner.

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Chapter 265

§ 61. Stolen property; restitution; effect

If, upon a first conviction under the preceding section¹, it is shown that the act of stealing the property was a simple larceny, and if the person convicted makes restitution to the person injured to the full value of the property stolen and not restored, he shall not be imprisoned in the state prison.

§ 19. Robbery by unarmed person; punishment; victims sixty-five or older; minimum sentence for repeat offenders

(a) Whoever, not being armed with a dangerous weapon, by force and violence, or by assault and putting in fear, robs, steals or takes from the person of a person sixty-five years or older, or from his immediate control, money or other property which may be the subject of larceny, shall be punished by imprisonment in the state prison for life or for any term of years.

Whoever, after having been convicted of said crime, commits a second or subsequent such crime, shall be punished by imprisonment for not less than two years. Said sentence shall not be reduced until two years of said sentence have been served nor shall the person convicted be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served two years of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relative to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection.

(b) Whoever, not being armed with a dangerous weapon, by force and violence, or by assault and putting in fear, robs, steals or takes from the person of another, or from his immediate control, money or other property which may be the subject of larceny, shall be punished by imprisonment in the state prison for life or for any term of years.

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Chapter 266

§ 25. Larceny by stealing; punishment; victim sixty-five or older; minimum sentence for repeat offenders

(a) Whoever commits larceny by stealing from the person of a person sixty-five years or older shall be punished by imprisonment in the state prison for not more than five years or in jail for not more than two and one-half years.

Whoever, after having been convicted of said crime commits a second or subsequent such crime, shall be punished by imprisonment for not less than two years. Said sentence shall not be reduced until one year of said sentence has been served nor shall the person convicted be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served one year of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection.

(b) Whoever commits larceny by stealing from the person of another shall be punished by imprisonment in the state prison for not more than five years or in jail for not more than two and one-half years.

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CHAPTER 19A. DEPARTMENT OF ELDER AFFAIRS

GENERAL PROVISIONS

Sec.
4A. Sliding fee scale for home care services; financial eligibility limits [New].

PROTECTIVE SERVICES [NEW]

14. Definitions.
15. Reports of abuse; liability.
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Sec.
19. Consent to protective services; interference with provision of services.
20. Lack of capacity to consent to protective services; hearings; emergency orders; placement or commitment.
21. Geriatric evaluation process.
22. Financial eligibility guidelines; reimbursements by elderly persons.
23. Records; disclosure; destruction; regulations; penalties.
24. Reports.
25. Rules and regulations.
26. Powers and responsibilities of other departments or agencies.

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§ 14. Definitions

For the purposes of sections fourteen to twenty-seven, inclusive, the following words and terms shall, unless the context otherwise requires, have the following meaning:

"Abuse", an act or omission which results in serious physical or emotional injury to an elderly person; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.

"Caretaker", the person responsible for the care of an elderly person, which responsibility may arise as the result of a family relationship, or by a voluntary or contractual duty undertaken on behalf of an elderly person, or may arise by a fiduciary duty imposed by law.

"Conservator", a person who is appointed to manage the estate of a person pursuant to chapter two hundred and one.

"Court", the probate and family court.

"Department", the department of elder affairs.

"Elderly person", an individual who is sixty years of age or over.

"Emergency", a situation in which an elderly person is living in conditions which present a substantial risk of death or immediate and serious physical or mental harm.

"Geriatric evaluation process", a team of medical psychological, psychiatric, social work professionals designated or established by the department for the purpose of conducting comprehensive physical, mental, social evaluation of an elderly person.

"Guardian", a person who has qualified as a guardian of an elderly person pursuant to chapter two hundred and one, but shall not include a guardian *ad litem*.

"Protected person", an elderly person for whom a conservator or guardian has been appointed or other protective order has been made.

"Protective services", services which are necessary to prevent, eliminate or remedy the effects of abuse to an elderly person.

"Protective services agency", a public or nonprofit private agency, corporation, board, or organization designated by the department pursuant to this chapter to furnish protective services to elderly persons.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

Sections 1A and 2 of St.1982, c. 604, provided: "Section 1A. The department of elder affairs shall, subject to appropriation, implement the provisions of section one of this act on or before July first, nineteen hundred and eighty-three.

"Section 2. If any provision of the act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared severable."

§ 15. Reports of abuse; liability

(a) Any physician, medical intern, dentist, nurse, family counselor, probation officer, social worker, policeman, licensed psychologist, coroner, registered physical therapist, registered occupational therapist, osteopath, podiatrist, executive director of a licensed home health aid agency or executive director of a homemaker service agency who has reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse, shall immediately make a verbal report of such information or cause a report to be made to the department or its designated agency and shall within forty-eight hours

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make a written report to the department or its designated agency. Any person so required to make such reports who fails to do so shall be punished by a fine of not more than one thousand dollars.

(b) The executive director of a home care corporation, licensed home health agency or homemaker service agency shall establish procedures within such agency to ensure that homemakers, home health aides, case managers or other staff of said agency who have reasonable cause to believe that an elderly person has been abused shall report such case to the executive director of the corporation or agency. The executive director shall immediately make a verbal report of such information or cause a report to be made to the department or its designated agency and shall within forty-eight hours make a written report to the department or its designated agency.

(c) In addition to a person required to report under the provisions of subsection (a) of this section, any other person may make such a report to the department or its designated agency, if any such person has reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse.

(d) No person required to report pursuant to the provisions of subsection (a) shall be liable in any civil or criminal action by reason of such report. No other person making such report pursuant to the provisions of subsection (b) or (c) shall be liable in any civil or criminal action by reason of such report if it was made in good faith. No employer or supervisor may discharge, demote, transfer, reduce pay, benefits or work privileges, prepare a negative work performance evaluation, or take any other action detrimental to an employee or supervisee who files a report in accordance with the provisions of this section by reason of such report.

(e) Reports made pursuant to subsections (a) and (b) shall contain the name, address and approximate age of the elderly person who is the subject of the report, information regarding the nature and extent of the abuse, the name of the person's caretaker, if known, any medical treatment being received or immediately required, if known, any other information the reporter believes to be relevant to the investigation, and the name and address of the reporter and where said reporter may be contacted, if the reporter wishes to provide said information. The department shall publicize the provisions of this section and the process by which reports of abuse shall be made.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 16. Protective services system

(a) Subject to appropriation, the department shall develop a coordinated system of protective services for elderly persons who are determined to be abused. In planning this system, the department shall require input from the department of social services, the existing protective service agencies and other agencies currently involved in the provision of social, health, legal, nutritional, and other services to the elderly, as well as elderly advocacy organizations.

(b) Within this protective services system, the department shall establish a mechanism for the receipt of reports made pursuant to section fifteen which shall operate and be accessible on a twenty-four hour per day basis. If the department or its designated agency has reasonable cause to believe that an elderly person has died as a result of abuse, the death shall immediately be reported to the district attorney of the county in which the

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elderly person resided. Within forty-five days of the receipt of a report made pursuant to subsection (a) of said section fifteen, the department or its designated agency shall notify the reporter, in writing, of its response to the report. Such notification shall be made to a person who makes a report pursuant to subsection (c) of said section fifteen if said reporter so requests.

(c) Subject to appropriation, the department shall designate at least one local agency to act on behalf of the department with a geographic area as defined by the department. The department may designate any public agency or private nonprofit organization which has the capacity to implement a service plan through direct access to social, health and mental health services. The department shall utilize existing resources and services of public and nonprofit private agencies in providing protective services. The department shall insure that assessment, evaluation and service delivery shall be provided through the designated local agency closest to the elderly person's community.

In designating agencies, the department shall insure that: (1) persons conducting assessment, evaluation and service delivery have demonstrated experience in providing protective and other social health services to elders, have these protective functions as their primary employment responsibility, and have other professional qualifications as determined by the secretary; (2) continuity of care under one protective services worker is assured throughout assessment, evaluation and services delivery to the extent possible; and (3) the department and the designated agencies have the capacity to respond to an emergency and provide or arrange for services to alleviate the immediate danger of abuse of an elderly person on twenty-four hours per day basis.

The department shall monitor assessments, evaluations and the provision of protective services by designated local agencies.

(d) The department shall issue regulations establishing criteria and procedures for the designation of protective services agencies or for the termination or designation or redesignation of protective services agencies.

(e) The department shall be responsible for continuing coordination and supervision of the system. In carrying out these duties, the department shall, subject to appropriation: (1) adopt rules and regulations for the system; (2) continuously monitor the effectiveness of the system and perform evaluative research about it; and (3) utilize grants from federal, state and other public and private sources to support the system.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 17. Protective services agencies; authorized activities

A protective services agency is authorized:

- (1) to receive and investigate reports of abuse;
- (2) to furnish protective services to an elderly person with his or her consent;
- (3) to petition the court for appointment of a conservator or guardian or for issuance of an emergency order for protective services;
- (4) to furnish protective services to an elderly person on an emergency basis as hereinafter provided;
- (5) to furnish protective services to a protected person with the consent of such person's guardian or conservator;

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- (6) to serve as conservator, guardian, or temporary guardian of a protected person; and
- (7) to perform all other functions determined by the department to be necessary for the administration of this chapter.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 18. Assessment and evaluation of reports; investigations; arrangement for protective services

- (a) The department or its designated agency shall assess and evaluate the information reported pursuant to the provisions of section fifteen.

Such assessment shall include a visit to the residence of the elderly person who is the subject of the report and may include consultations with appropriate service agencies and individuals who have knowledge of the elderly person's situation including the person filing the report. The elderly person who is the subject of the report shall receive written notice that an assessment is being conducted and shall have the right to review the file and report developed as a result of the assessment.

If the assessment results in a determination that the elderly person is suffering from abuse, the department or the designated agency shall evaluate the elderly person's functional capacity, situation, and resources and shall develop a service plan for the provision of protective services. Said plan shall be appropriate to the needs of the elderly person and shall utilize the least restrictive alternatives.

The department shall adopt rules and regulations establishing time limits for the completion of assessments and evaluations and for the implementation of service plans; provided, however, that if an emergency exists, assessments shall be completed within twenty-four hours of the receipt of the report.

If an assessment results in a determination that the elderly person has suffered serious abuse, the department or designated agency shall report such determination to the district attorney of the county within which the elderly person resides within forty-eight hours. The district attorney may investigate and decide whether to initiate criminal proceedings.

- (b) The department or the designated agency shall provide or arrange for protective services in accordance with the service plan developed pursuant to the provisions of subsection (a). Protective services shall include, but not be limited to, the following: the capacity to respond to an emergency; protective services case work; the capacity to provide or arrange for homemaker, home-health aide, transportation, legal assistance, counseling and nutrition services and guardianship and conservatorship, or protective order through the court.

The department or the designated agency is authorized to provide or arrange for additional services necessary to assist and protect elderly persons who have been abused, including, but not limited to the following: emergency housing, medical care, mental health care, emergency financial assistance, foster care and adult day care services.

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§ 19. Consent to protective services; interference with provision of services

- (a) Any elderly person who requests or affirmatively consents to the receipt of protective services may receive said services. If the person withdraws or refuses consent, the service shall not be provided or continued except as provided in section twenty.

(b) No person shall interfere with the provision of protective services to an elderly person who requests or consents to receive such services. In the event that interference occurs on a continuing basis, the department, a protective services agency, or the public guardian may petition the court to enjoin such interference.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 20. Lack of capacity to consent to protective services; hearings; emergency orders; placement or commitment

- (a) If the department or its designated agency has reasonable cause to believe that an elderly person is suffering from abuse and lacks the capacity to consent to the provision of protective services, the department or its designated agency may petition the court for a finding that the elderly person is incapable of consenting to the provision of protective services. Said petition shall set forth the specific facts upon which the department or the designated agency relied in making the determination. The court shall hold a hearing on the matter within fourteen days of the filing of the petition. The court shall give notice to the elderly person who is the subject of the petition at least five days prior to the date set for the hearing. The elderly person who is the subject of the petition shall have the right to be present, be represented by counsel, present evidence, and examine and cross-examine witnesses. If the elderly person who is the subject of the petition is indigent, the court shall appoint counsel to represent such elderly person. If the court determines that the elderly person lacks the capacity to waive the right to counsel, the court shall appoint a guardian ad litem to represent the interests of such elderly person. If, after hearing, the court determines, based upon clear and convincing evidence, that such elderly person has been abused, is in need of protective services and lacks the capacity to consent and no other person who is authorized to consent is available or willing to consent, the court may appoint a conservator, guardian, or other person authorized to consent to the provision of protective services; provided, however, that the court shall establish the least restrictive form of fiduciary representation that will satisfy the needs of such elderly person. In addition to or in the alternative, the court may issue an order requiring the provision of services. The order shall contain a specific description of the services to be provided and insure that the least restrictive alternatives are utilized.

- (b) If an emergency exists and the department, its designated agency, a member of the immediate family or a caretaker has reasonable cause to believe that an elderly person is suffering from abuse and lacks the capacity to consent to the provision of protective services, said department, designated agency, member of the immediate family or caretaker may petition the court for an emergency order of protective services. The court shall give notice to the elderly person who is the subject of the petition at least twenty-four hours prior to the hearing. The court may dispense with notice upon finding that immediate and reasonable foreseeable physical harm to the individual or others will result from the twenty-four hour delay and that reasonable attempts have been made to give such notice. If after the hearing, the court determines, based on clear and convincing evidence, that the elderly person has been or is being abused, that an emergency exists,

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and that the elderly person lacks the capacity to consent to the provision of services, the court may order the provision of protective services on an emergency basis. The court shall order only those services necessary to remove the conditions creating the emergency and shall specifically designate the authorized services in its order. The order for emergency protective services shall remain in effect for a period not to exceed seventy-two hours. Said order may be extended for an additional seventy-two hour period if the court finds that the extension is necessary to remove the emergency.

(c) The court shall not order an institutional placement or change of residence unless it finds that no less restrictive alternative will meet the needs of the elderly person. No elderly person may be committed to a mental health facility pursuant to this chapter. The elderly person or his or her court-appointed representative, the department, or the designated agency may petition to have any order issued pursuant to subsection (a) or (b) set aside or modified at any time.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 21. Geriatric evaluation process

(a) Subject to appropriation, the department shall establish a geriatric evaluation process for the purpose of conducting a comprehensive physical, mental, or social evaluation of an elderly person for whom a petition has been filed in a court for appointment of a conservator or guardian, under the provisions of clause (3) of section seventeen, or for an emergency order for protective services.

(b) The evaluation of an elderly person conducted by the geriatric evaluation process shall include at least the following:

(1) the name and address of the place where the person is residing and of the person or agency, if any, who is providing services at present;

(2) a description of the treatment and services, if any, presently being provided to the person;

(3) an evaluation of the person's present physical, mental, and social conditions; and

(4) a recommendation concerning the least restrictive course of services, care or treatment consistent with the person's needs.

(c) Subject to appropriation, the cost of this evaluation shall be borne by the department.

(d) Such elderly person shall have the right, at his own expense to secure an independent medical and psychological or psychiatric examination relevant to the issue involved in any hearing under this section and to present a report of his independent evaluation or the evaluator's personal testimony as evidence at the hearing.

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§ 22. Financial eligibility guidelines; reimbursements by elderly persons

The department shall establish, by regulation, financial eligibility guidelines which provide a procedure for reimbursement by elderly persons for all or part of cost of protective services. If the department or the designated agency determines, pursuant to section eighteen, that an elderly person who is in need of protective services has sufficient resources to pay for part or all of the cost of protective services, it shall initiate said procedures for reimbursement. If the department or designated agency determines that an elderly person does not have sufficient resources, no reimbursement for any such costs shall be charged to the elderly person.

No elderly person shall be required to reimburse the department for part or all of the cost of protective services unless he or she has been notified prior to the commencement of service provision that a reimbursement will be charged. No elderly person shall be required to reimburse the department for protective services before service provision commences.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 23. Records; disclosure; destruction; regulations; penalties

(a) Except as otherwise provided in this section, all records containing personal data which are created, collected, used, maintained or disseminated pursuant to this chapter shall not be public records, and shall be governed by the provisions of chapter sixty-six A, the notice provisions of section sixty-three of chapter thirty and the enforcement provisions of section three B of chapter two hundred and fourteen.

(b) If the department, any designated agency, or any other agency obligated to make an assessment under this chapter determines that the allegations in a report cannot be substantiated, it shall within three months of such determination, either (i) destroy said report and any other records containing personal data created because of the receipt of said report or (ii) physically remove therefrom all personal identifiers; provided, however, that the department, the designated agency or any other agency obligated to make assessments may create and hold whatever statistical records it needs for purposes of planning and reporting, as may be prescribed by regulations adopted by the department pursuant to section two of chapter thirty. Each government agency shall promulgate regulations prescribing the manner of creating and holding its own such statistical records, and the department shall adopt such regulations for itself and any designated agency.

(c) The department, any designated agency, or any other agency obligated to make an assessment under this chapter shall inform in writing an individual, upon his request, whether he is a data subject, as that term is defined in section one of chapter sixty-six A, with respect to records created or maintained under this chapter, and if so, the department or agency shall make such data fully available to him or his authorized representative, upon his request, in a form comprehensible to him, unless doing so is prohibited or excused under the provisions of this or any other statute. In making any disclosure or information to a data subject the department or agency may remove personal identifiers relating to a third person, except where such third person is an officer or employee of a government or non-governmental department or agency obligated to make assessments under this chapter.

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(d) Any agent or employee of the department, a designated agency, or any other agency obligated to make an assessment under this chapter who violates the provisions of chapter sixty-six A, as modified by this section, with respect to records created or maintained under this chapter shall be punished by a fine of not more than five hundred dollars, or, if harm shall have resulted to any one whose privacy was sought to be protected by the provision violated, by a fine of not more than one thousand dollars, and, if such agent or employee is employed by the commonwealth, he shall also be subject to administrative disciplinary action pursuant to regulations adopted by the department or agency under section two of chapter thirty A.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 24. Reports

Within one hundred and twenty days following the end of each fiscal year, the department shall submit a report to the governor, the general court and the public which shall include a description of the activities of the department and all designated agencies pursuant to sections fourteen to twenty-seven, inclusive, during the preceding fiscal year. Said report shall contain statistical information about the number and types of reports received under section fifteen; the results of the assessments and evaluations conducted and the amount, type and costs of services provided under section eighteen; and information on the quality of services provided and the results of such services in terms of alleviating abuse. Said report shall identify problems that may arise in the implementation of this chapter and shall contain the recommendations of the department for action on the part of the legislature.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 25. Rules and regulations

The secretary shall adopt and from time to time revise rules and regulations for the implementation of the provisions of sections fifteen to twenty-four, inclusive.

Added by St.1982, c. 604, § 1.

1982 Enactment. St.1982, c. 604, § 1, was approved Dec. 28, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

§ 26. Powers and responsibilities of other departments or agencies

Nothing in this chapter shall be construed to be a limitation of the powers and responsibilities assigned by law to other departments or agencies.

Added by St.1982, c. 604, § 1.

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Chapter 123A

§ 10. Availability of facilities to victims of sexual attacks

The commissioner of mental health may make available on a voluntary and confidential basis the facilities of the department of mental health to persons who are victims of sexual attack.

CHAPTER 209A. ABUSE PREVENTION

Sec.

1. Definitions.

2. Venue.

3. Remedies; period of relief.

Sec.

4. Temporary orders; notice; hearing.

5. Ex parte relief; termination; effect.

6. Powers of police.

Chapter 209A of the General Laws was added by St.1978, c. 447, § 2.

Law Review Commentaries

Commonwealth v. Cadwell: Deliberate premeditation, extreme atrocity and cruelty, and the

battered child syndrome—a new look at criminal culpability in Massachusetts. (1979) 14 New England L.Rev. 812.

§ 1. Definitions

The following words as used in this chapter shall have the following meanings:

"Abuse", the occurrence of one or more of the following acts between family or household members:

(a) attempting to cause or causing physical harm;

(b) placing another in fear of imminent serious physical harm;

(c) causing another to engage involuntarily in sexual relations by force, threat of force or duress.

"Court", the superior, probate or district courts.

"Family or household member", household member, a spouse, former spouse or their minor children or blood relative.

"Law officer", any officer authorized to serve criminal process.

Added by St.1978, c. 447, § 2.

1978 Enactment. St.1978, c. 447, § 1, adding this chapter, consisting of this section and §§ 2 to 6, was approved July 17, 1978.

Cross References

Terms and conditions of personal recognizance to protect family, see c. 276, § 42A.

§ 2. Venue

Proceedings under this chapter shall be filed, heard and determined in the district, superior court or the probate court of the county in which the plaintiff resides. If the plaintiff has left the residence or household to avoid abuse, he shall have the option to bring an action in the county of the previous residence or household or the new residence or household.

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Added by St.1978, c. 447, § 2.

§ 3. Remedies; period of relief

A person suffering from abuse from an adult or minor family or household member may file a petition in the district, probate or superior court requesting any order which will protect him from abuse, including, but not limited to the following:

(a) ordering the defendant to refrain from abusing the plaintiff, whether the defendant is an adult or minor;

(b) ordering the defendant to vacate forthwith the household;

(c) awarding the plaintiff in the case of husband or wife temporary custody of a minor;

(d) ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody, or both, when the defendant has a legal obligation to support such person;

(e) ordering the defendant to pay to the person abused monetary compensation for losses suffered as a direct result of the abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses and reasonable attorney fees.

No filing fee shall be charged for such a petition.

Any relief granted by the court shall be for a fixed period of time not to exceed one year, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from abuse. The court may modify its order at any subsequent time upon motion by either party.

No order under this chapter shall in any manner affect title to any real property.

Any proceedings under this chapter shall not preclude any other available civil or criminal remedies.

Added by St.1978, c. 447, § 2.

1978 Enactment. St.1978, c. 447, § 6, provided:

"The chief justice of the superior court and the chief judge of the probate court and the chief justice of the district courts shall jointly promulgate a form of petition for chapter two hundred and nine A of the General Laws, inserted by section one of this act [so in enrolled bill; should read "section two of this act"], which shall be simple and permit a person to file a petition himself."

Notes of Decisions

1. Purpose of law

Indication of legislative purpose in Domestic Violence Act constituted clear legislative statement of public policy which Supreme Judicial Court would try to advance in its construction of rape statute. (c. 265, § 22). Com. v. Chretien (1981) 417 N.E.2d 1203, 383 Mass. 123.

§ 4. Temporary orders; notice; hearing

Upon the filing of a petition under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from abuse, including relief as provided in section eighteen and section thirty-four B of chapter two hundred and eight and section thirty-two of chapter two hundred and nine.

If the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, the court may enter such temporary order without notice as it deems necessary to protect the plaintiff. The court shall immediately thereafter notify the defendant and give him an opportunity to be heard as soon as possible but not schedule the hearing later than five days after such order is entered on the question of continuing such temporary order.

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§ 5. Ex parte relief; termination; effect

When the court is unavailable after the close of business at the end of the week, a petition may be filed before any available district court justice who may grant relief to the plaintiff under section three upon cause shown in an ex parte proceeding. Immediate and present danger of abuse to the plaintiff shall constitute cause for purposes of this section.

Any order issued under this section shall terminate as of the close of business on the next day the court is in session.

Any order issued under this section and any documentation in support thereof shall be certified immediately by the clerk of the district court to the court. Such certification to the court shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter.

Added by St.1978, c. 447, § 2.

§ 6. Powers of police

Whenever any law officer has reason to believe that a family or household member has been abused, that officer shall use all reasonable means to prevent further abuse, including: (1) remaining on the scene as long as there is a danger to the physical safety of such person without the presence of a law officer, including but not limited to staying in the dwelling unit; (2) assisting such person in obtaining medical treatment necessitated by an assault, including driving the victim to the emergency room of the nearest hospital; (3) giving such person immediate and adequate notice of his rights, (4) arresting the person if the officer has probable cause to believe that a felony has been committed, or a misdemeanor has been committed in the officer's presence, or a misdemeanor has been committed pursuant to section thirty-four C of chapter two hundred and eight. Said notice shall consist of handing such person a copy of the following statement written in English and Spanish, and reading the same to such person:

"You have the right to go to the district, probate or superior court and file a complaint requesting any of the following applicable orders for temporary relief: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for your or any minor child in your custody if the attacker has a legal obligation to support them; and (e) an order directing your attacker to pay you for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, attorney fees and other out-of-pocket losses for injuries sustained.

You have the right to go to district court and file a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related crimes. You may go to district court for an emergency on weekends or holidays.

If you are in need of medical treatment, you have the right to demand that the officer present drive you to the nearest hospital or otherwise assist you.

If you believe that police protection is needed for your physical safety, you have the right to demand that the officer present remain at the scene until you and your children can leave or until your safety is otherwise insured."

Category	Citation
1. Victim Compensation Program	18.351 et seq.
1.1 Responsible Agency	18.352
1.2 Eligible Claimants	18.354(1),(2)
1.3 Losses Covered	18.361(1)
1.4 Minimum and Maximum Award	18.354(3), 18.361(1)
1.5 Required to Show Financial Need	18.361(5)
1.6 Required to Report Crime - Time Limit	18.360(c)
1.7 Filing of Claim - Time Limit	18.355(2)
1.8 Emergency Award	18.359
1.9 Funding	18.362, 18.364
2. Restitution	
2.1 Sentencing Option	769.3; 18.362
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	775.13, 775.15
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	28.401 et seq.; 434.181 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	600.2950 et seq.; 764.15b
14.2 Domestic Violence Shelters	400.1501, 400.1506, 400.1507
14.3 Domestic Violence Reporting	28.257
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	18.353(d)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	18.363 (compensation board records)
15.4 Sexual Assault Counselor Privilege	

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Michigan Compiled Laws Annotated

The People of the State of Michigan enact:

18.351 Definitions

Sec. 1. As used in this act:

- (a) "Board" means the crime victims compensation board.
- (b) "Claimant" means a victim or intervenor who is a resident of this state and who files a claim pursuant to this act.
- (c) "Crime" means an act which constitutes a crime pursuant to the laws of this state and which causes an injury within the state of Michigan.
- (d) "Intervenor" means a person who goes to the aid of one who has become a victim of a crime and who suffers personal injury.
- (e) "Out-of-pocket loss" means the unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care, any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing, or other services necessary as a result of the injury upon which a claim is based.
- (f) "Personal injury" means actual bodily harm and includes pregnancy.
- (g) "Victim" means a person who suffers a personal physical injury as a direct result of a crime.

P.A.1976, No. 223, § 1, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220. Words and Phrases (Perm. Ed.)
C.J.S. Criminal Law § 2007.

18.352 Crime victims compensation board; creation, members, terms, vacancies, chairman, executive director, compensation

Sec. 2. (1) The crime victims compensation board is created within the department of management and budget. The board shall consist of 3 members of which not more than 2 shall belong to the same political party and who shall be appointed by the governor with the advice and consent of the senate. At least 2 members of the board shall be admitted to practice law in this state for not less than 5 years immediately preceding their appointment.

(2) The term of office of a member shall be 3 years, except that the members first appointed shall serve for terms of 1, 2, and 3 years.

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A member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(3) The governor shall designate 1 member of the board to serve as chairman at the pleasure of the governor. The chairman shall also serve as executive director of the board.

(4) The chairman of the board shall devote his whole time and capacity to his duties, shall not engage in any other occupation, profession of employment, and shall receive an annual salary to be fixed by appropriation. The remaining members of the board shall be paid on a per diem basis as determined by the legislature.

P.A.1976, No. 223, § 2, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220. C.J.S. Criminal Law § 2007.

Notes of Decisions

- 1. In general independently of the Department of
The Crime Victims Compensation Management and Budget, under § 18.351
Board may perform its statutory duties et seq. Op.Atty.Gen. 1979, No. 5604.

18.353 Powers of board

Sec. 3. The board shall:

- (a) Establish and maintain a principal office and other offices within the state as it may deem necessary.
- (b) Appoint a secretary, clerks, or other employees and agents as it may deem necessary.
- (c) Promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, including rules for the approval of attorneys' fees for representation before the board or before the court of appeals upon judicial review as provided for in section 8.¹
- (d) Obtain from a state or local governmental unit assistance and data to enable the board to carry out its functions and duties.
- (e) Hear and determine claims for awards and to reinvestigate or reopen cases as the board deems necessary.
- (f) Direct medical examination of victims.
- (g) Hold hearings, administer oaths or affirmations, examine any person under oath or affirmation, issue subpoenas requiring the attendance and giving of testimony of witnesses and the production of books, papers, documentary or other evidence. For the purposes of this section, a certified copy of any investigative report relating to

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the hearing in question will meet the requirements of this section. The powers provided in this subdivision may be delegated by the board to a member or employee thereof.

(h) Take or cause to be taken affidavits or depositions within or without the state.

(i) Give an annual written report of its activities to the governor and to the legislature.

(j) Conduct a program to insure continued public awareness of the provisions of this act in cooperation with state and local agencies.

P.A.1976, No. 223, § 3, Eff. March 31, 1977.

¹ Section 18.358.

Library References

Criminal Law ¶1220.

C.J.S. Criminal Law § 2007.

Notes of Decisions

1. In general

The Crime Victims Compensation Management and Budget, under § 18.- Board may perform its statutory duties 351 et. seq. Op.Atty.Gen. 1979, No. independently of the Department of 5604.

18.354 Awards; persons eligible, persons not eligible, minimum out-of-pocket loss

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

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

(b) A surviving spouse, parent, or child of a victim of a crime who died as a direct result of the crime.

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

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

(a) Criminally responsible for the crime.

(b) An accomplice to the crime.

(c) A person who resides in the same household with the person who is criminally responsible for the crime, except ¹ to the extent that actual out-of-pocket expenses incurred by the victim may be paid directly to a medical care provider by the board. As used in this subdivision "resides" does not include the situation of a domestic employee, unrelated by blood or marriage to the employer, who is living in the household of the employer.

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(3) An award shall not be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of \$100.00 or has lost at least 2 continuous weeks' earnings or support, but the board may waive the limitations of this subsection in the case of a claimant retired by reason of age or disability.

P.A.1976, No. 223, § 4, Eff. March 31, 1977.

¹ So in enrolled bill; probably should be "except".

Library References

Criminal Law ¶1220.

C.J.S. Criminal Law § 2007.

18.355 Claims; persons filing, time, place, acceptance, notification of prosecuting attorney, deferment of proceedings

Sec. 5. (1) A claim may be filed by the person eligible to receive an award, or if a person is a minor, by his parent or guardian.

(2) A claim shall be filed by the claimant not later than 30 days after the occurrence of the crime upon which the claim is based, or not later than 90 days after the death of the victim. The board for good cause may extend the time for filing for a period not more than 1 year after the occurrence.

(3) A claim shall be filed in the office of the secretary of the board in person or by mail. The secretary of the board shall accept for filing a claim which is submitted by a person who is eligible and which alleges the jurisdictional requirements set forth in this act and meets the requirements as to form as approved by the board.

(4) Upon filing of a claim, the board shall promptly notify the prosecuting attorney of the county wherein the crime is alleged to have occurred. If, within 20 days after the notification, the prosecuting attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer the proceedings until the criminal prosecution is concluded. When the criminal prosecution is concluded, the prosecuting attorney shall promptly notify the board. Nothing in this section prohibits the board from granting emergency awards pursuant to section 9.¹

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18.356 Claims; assignment to board member, examination, investigation, decision, hearing, report

Sec. 6. (1) When accepted for filing, a claim shall be assigned by the chairman to a member of the board. All claims which arise from the death of an individual as a direct result of a crime shall be considered together by the same board member.

(2) The board member shall examine the papers filed in support of the claim. The board member shall cause an investigation to be conducted into the validity of the claim. The investigation shall include an examination of official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(3) A claim shall be investigated and determined, regardless of whether the alleged criminal was apprehended, prosecuted, convicted, acquitted, or found not guilty of the crime in question.

(4) The board member may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If a board member is unable to decide the claim upon the basis of the papers and the report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, is admissible.

(5) After examining the papers filed in support of a claim and the report of investigation, and after a hearing, if any, the board member shall make a decision granting or denying the award.

(6) The board member shall file with the secretary a written report setting forth the decision and his reasons therefor. The secretary shall notify the claimant and furnish him with a copy of the report.

P.A.1976, No. 223, § 6, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

Notes of Decisions

1. Hearing

Where Crime Victims' Compensation claim is denied, claimant has the right to an evidentiary hearing, if he so desires. *Fitch v. Crime Victims' Compensation Bd.* (1980) 297 N.W.2d 667, 99 Mich.App. 363.

18.357 Claims; full board review

Sec. 7. (1) Within 30 days after receipt of the report of the decision of the board member, a claimant may make an application in

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writing to the board for consideration of the decision by the full board.

(2) Within 30 days after the filing of the report, a member of the board may make an application in writing to the board for consideration of the decision by the full board.

(3) Upon receipt of an application pursuant to subsection (1) or (2), the board shall review the record and affirm or modify the decision. The action of the board in affirming or modifying the decision is final. The board shall file with the secretary of the board a written report setting forth its decision and if the decision varies from the report of the board member it shall set forth its reasons for the decision. If the board does not receive an application pursuant to subsection (1) or (2), the decision of the board member to whom the claim was assigned shall become the final decision of the board.

(4) The secretary of the board shall within 15 days notify the claimant of the final decision of the board and furnish him with a copy of the decision.

P.A.1976, No. 223, § 7, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

18.358 Claims; review by court of appeals

Sec. 8. (1) Within 30 days after receipt of the copy of the report containing the final decision of the board, the claimant may by leave to appeal commence a proceeding in the court of appeals to review the decision of the board.

(2) A proceeding pursuant to this section shall be commenced by the service of notice upon the board in person or by mail.

P.A.1976, No. 223, § 8, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

18.359 Emergency award pending final decision

Sec. 9. If it appears to the board member to whom a claim is assigned, before he takes action upon the claim, that the claim is one with respect to which an award probably will be made and undue hardship will result to the claimant if immediate payment is not made, the board member may make an emergency award to the claimant pending a final decision in the case. The amount of the emergency award shall not exceed \$500.00. The amount of the emer-

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gency award shall be deducted from the final award made to the claimant. The excess of the amount of the emergency award over the amount of the final award, if any, shall be repaid by the claimant to the board.

P.A.1976, No. 223, § 9, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

18.360 Awards; necessary findings.

Sec. 10. An award shall not be made unless the board or board member finds all the following:

- (a) A crime was committed.
- (b) The crime directly resulted in personal physical injury to, or death of, the victim.
- (c) Police records show that the crime was reported promptly to the proper authorities. An award may not be made where the police records show that the report was made more than 48 hours after the occurrence of the crime unless the board, for good cause shown, finds the delay was justified.

P.A.1976, No. 223, § 10, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

18.361 Awards; out-of-pocket loss, loss of earnings or support, maximum, reductions, rejection, denial

Sec. 11. (1) An award made pursuant to this act shall be in an amount not more than an out-of-pocket loss, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from the injury. The aggregate award under this act shall not exceed \$15,000.00 per claimant.

(2) An award made for loss of earnings or support, unless reduced pursuant to this act, shall be in an amount equal to the actual loss sustained. An award shall not exceed \$100.00 for each week of lost earnings or support.

(3) An award shall be reduced by the amount of a payment received or to be received as a result of the injury:

- (a) From or on behalf of the person who committed the crime.

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(b) From insurance, but not including disability or death benefits paid or to be paid to a peace officer on account of injuries sustained in the course of employment.

(c) From public funds, but not including disability or death benefits paid or to be paid to a peace officer on account of injuries sustained in the course of employment.

(d) From an emergency award pursuant to section 9.¹

(4) The board shall determine whether the claimant contributed to the infliction of his injury and shall reduce the amount of the award or reject the claim altogether, in accordance with the determination. The board may disregard for this purpose the responsibility² of the claimant for his own injury where the record shows that the injury was attributable to efforts by the claimant 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.

(5) If the board finds that the claimant will not suffer serious financial hardship as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury if not granted financial assistance, the board shall deny the award. In determining the serious financial hardship, the board shall consider all of the financial resources of the claimant.

P.A.1976, No. 223, § 11, Eff. March 31, 1977.

¹ Section 18.359.

² So in enrolled bill; probably should read "responsibility".

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

18.362 Awards; payments; reimbursement by felon, condition of sentence

Sec. 12. The award shall be paid in a lump sum, except that in the case of death or protracted disability the board may specify that the award shall provide for periodic payments to compensate for loss of earnings or support. An award made pursuant to this act shall not be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. Any court of record, in establishing sentence for a felon convicted of a crime resulting in awards paid under this section, may impose a condition that the sentence include a method for reimbursement to the state, within the ability of the felon to comply, of the costs paid under this act to a victim of a crime for which the conviction was made. Such reimbursement will be paid into the general fund of the state. Such condition of reimbursement may include a provision relating suspen-

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sion or probation to reimbursement or may be in lieu of other sentencing and shall be enforceable by the court to the degree that failure to meet the terms of reimbursement may be cause for reversion to an alternate sentence or to completion of an unfinished sentence. P.A.1976, No. 223, § 12, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

18.363 Board proceedings, public record; confidential records or reports

Sec. 13. The record of a proceeding before the board shall be a public record. A record or report obtained by the board, the confidentiality of which is protected by any other law or rule, shall remain confidential.

P.A.1976, No. 223, § 13, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

18.364 Subrogation of state to right of recovery

Sec. 14. Acceptance of an award made pursuant to this act shall subrogate the state, to the extent of the 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 with respect to which the award is made.

P.A.1976, No. 223, § 14, Eff. March 31, 1977.

Library References

Criminal Law Ⓒ1220.

C.J.S. Criminal Law § 2007.

18.365 Inadmissibility of information in criminal proceedings

Sec. 15. For purposes of this act, information relating to the filing of a claim by a claimant before the board or proceedings before the board, an emergency award made by the board pursuant to section 9,¹ or final awards made by the board pursuant to section 11(2)² shall be inadmissible in a criminal proceeding.

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18.366 Fraudulently made awards, misdemeanor and felony; disclosure of confidential information, misdemeanor

Sec. 16. (1) A person who, with intent to defraud or cheat by falsely presenting the facts and circumstances of a crime to the board, causes an award of money less than \$100.00 to be made under this act to any person is guilty of a misdemeanor punishable by imprisonment in the county jail not more than 3 months, or by a fine of not more than \$1,000.00, or both; if the award is valued at more than \$100.00, such person shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years or by a fine of not more than \$15,000.00, or both.

(2) A person who makes public or discloses to an unauthorized person information which is confidential under this act is guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 3 months, or by a fine of not more than \$1,000.00, or both.

P.A.1976, No. 223, § 16, Eff. March 31, 1977.

Library References

Fraud Ⓒ68.10(1).

C.J.S. Fraud § 154.

18.367 Review by legislature

Sec. 17. The legislature of the state of Michigan shall review the complete functions, responsibilities, and performance of the crime victims compensation board 4 years after the effective date of this act.

P.A.1976, No. 223, § 17, Eff. March 31, 1977.

18.368 Application of act

Sec. 18. This act shall apply to crimes committed on or after October 1, 1977.

* * *

769.3 Conditional sentence; payment of fine, probation

Sec. 3. When any persons shall be convicted of an offense punishable at the discretion of the court, either by fine or imprisonment in the county jail or by a fine or imprisonment in the state prison, the court may award against such offender a conditional sentence and order him to pay a fine, with or without the costs of prosecution, within a limited time to be expressed in the sentence, and, in default thereof, to suffer such imprisonment as is provided by law and

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awarded by the court. The court may also place such offender on probation with the condition that he pay a fine or costs or damages or any or all of them, as the case may be, in installments with any limited time and may, in case of the default in any of such payments, impose such sentence as is provided by law.

* * *

775.13 Witness fees; mileage

Sec. 13. (1) If a person attends court as a witness in behalf of the prosecution, upon the request of the prosecuting attorney, upon a subpoena, or because of a recognizance for that purpose, the witness shall be entitled to the following fees:

(a) For attending in a court of record, \$12.00 for each day and \$6.00 for each half day.

(b) For attending in a municipal court or upon an examination, \$10.00 for each day and \$5.00 for each half day.

(c) ~~For traveling, 10 cents per mile in going to and returning from~~ the place of attendance, estimated from the residence of the witness if within the state and if without the state, from the boundary line of this state which the witness passed in traveling to attend court.

(2) A law enforcement officer shall not receive a fee as a witness in behalf of the people of this state if the law enforcement officer is on duty at the time he or she attends court nor shall the officer receive compensation in going to the place of attendance unless traveling to the court at the officer's own expense.

775.15 Accused unable to procure witness; subpoena, fees

Sec. 15. If any person accused of any crime or misdemeanor, and about to be tried therefor in any court of record in this state, shall make it appear to the satisfaction of the judge presiding over the court wherein such trial is to be had, by his own oath, or otherwise, that there is a material witness in his favor within the jurisdiction of the court, without whose testimony he cannot safely proceed to a trial, giving the name and place of residence of such witness, and that such accused person is poor and has not and cannot obtain the means to procure the attendance of such witness at the place of trial, the judge in his discretion may, at a time when the prosecuting officer of the county is present, make an order that a subpoena be issued from

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such court for such witness in his favor, and that it be served by the proper officer of the court. And it shall be the duty of such officer to serve such subpoena, and of the witness or witnesses named therein to attend the trial, and the officer serving such subpoena shall be paid therefor, and the witness therein named shall be paid for attending such trial, in the same manner as if such witness or witnesses had been subpoenaed in behalf of the people.

* * *

STOLEN PROPERTY DISPOSITION

Cross References

Disposition of lost, unclaimed or abandoned personalty, exemption of property subject to this act, see § 434.152.
Escheated and abandoned property, see § 567.11 et seq.
Forfeited weapons, disposition, see § 28.434.
Receiving or concealing stolen property, see § 750.535.

United States Code Annotated

Federal provisions relating to stolen property, offenses, see 18 U.S.C.A. §§ 659 et seq. and 2311 et seq.

P.A.1937, No. 203, Eff. Oct. 29

AN ACT to provide for the disposition and sale of stolen property recovered by the Michigan state police; and to provide for the disposition of the proceeds of sale.

The People of the State of Michigan enact:

28.401 Stolen property recovered by state police; period held

Sec. 1. The provisions of this act shall apply to any stolen money or other property recovered by the Michigan state police which shall not be claimed within 6 months after said recovery.

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28.402 Report to administrative board; money credited to general fund

Sec. 2. Forthwith after the expiration of said 6 months period, the commissioner of the Michigan state police shall report to the state administrative board, listing the money or other property so recovered and held, and requesting authority from the state administrative board to turn any money over to the state treasurer to be credited to the general fund and requesting authority from the state administrative board to sell at public sale any other property so recovered and held.

Historical Note

Source:

P.A.1937, No. 203, § 2, Eff. Oct. 29.
C.L.1948, § 28.402.

Library References

States ⇨126.

C.J.S. States § 228.

28.403 Authority for sale; posting notices; publication of notice contents

Sec. 3. The state administrative board shall act on the request of the commissioner of the Michigan state police within 6 months after the receipt of such request. In case authority is granted to the commissioner of the Michigan state police to turn any money so recovered and held over to the state treasurer or to sell any other property so recovered and held, the commissioner of the Michigan state police shall post 3 notices in the county in which the stolen money or other property was recovered, and also publish notice in a newspaper of general circulation in such county by insertions in 2 issues of said newspaper. Said notice shall describe the money so recovered and held and also the other property so recovered and held, together with the time and place of public sale at which said other property may be purchased by the highest bidder. Up until the said date of sale, the money or other property may be claimed at the East Lansing post of the Michigan state police, and if ownership is proved, such money or other property shall be turned over to the claimant, and the sale cancelled insofar as such property is concerned.

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28.404 Receipts from sale, credited to general fund

Sec. 4. After the holding of any such sale, the money received from such sale, after deducting the cost of the conducting thereof, and any other money recovered and held included in the notice provided for in section 3,¹ shall be turned over to the state treasurer to be credited to the general fund of the state.

¹ Section 28.403.

Historical Note

Source:

P.A.1937, No. 203, § 4, Eff. Oct. 29.
C.L.1948, § 28.404.

Library References

States ⇨126.

C.J.S. States § 228.

28.405 Validity of claim after notice and sale

Sec. 5. Except as provided in section 6 hereof,¹ no claim shall be valid to obtain any money or other property recovered by the Michigan state police, after notice and sale as provided in section 3 of this act,² said property and money being considered as abandoned and belonging to the state of Michigan.

¹ Section 28.406.

² Section 28.403.

Historical Note

Source:

P.A.1937, No. 203, § 5, Eff. Oct. 29.
C.L.1948, § 28.405.

Library References

States ⇨174.

C.J.S. States §§ 271, 272..

28.406 Validity of claim after notice and sale; reimbursement, limitation

Sec. 6. Provided, however, That the owner of the stolen property may prove his claim by proving the identity of the property and be reimbursed from the state treasurer in an amount not to exceed the amount paid for such goods at said sale, if such proof is accepted by the administrative board after the sale: Provided, however, That

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STOLEN OR ABANDONED PROPERTY IN VILLAGES AND TOWNSHIPS

Caption editorially supplied

P.A.1979, No. 214, Imd. Eff. Jan. 15, 1980

AN ACT to provide for the disposition and sale of stolen or abandoned property recovered or discovered within a village or township; and to provide for the disposition of the proceeds of sale.

434.181. Reports; requests to dispose of property.

Sec. 1. A law enforcement officer of a village or township who recovers stolen property or discovers abandoned personal property within the village or township, which is unclaimed for 6 months after recovery or discovery, shall report the recovery or discovery of that property, including money, to the village council or township board of trustees and shall request authority to dispose of the property as provided in this act or to give the property to the sheriff of the county to dispose of as provided in Act No. 54 of the Public Acts of 1959, being sections 434.171 to 434.174 of the Michigan Compiled Laws.

P.A.1979, No. 214, § 1, Imd. Eff. Jan. 15, 1980.

434.182. Disposition of property

Sec. 2. (1) The village council or township board of trustees shall act upon the request of the law enforcement officer within not less than 60 days after the receipt of the request and not more than 6 months after the receipt of the request.

(2) If the village council or township board of trustees authorizes the law enforcement officer to give the property to the sheriff of the county, the law enforcement officer shall deliver the property to the sheriff within 10 days.

(3) If the village council or township board of trustees authorizes the law enforcement officer to dispose of the property pursuant to this act, the law enforcement officer shall conduct a sale of the property in the manner provided in subsection (4).

(4) The law enforcement officer shall publish a notice in a newspaper of general circulation in the county not less than 5 days before the proposed sale of the property. The notice shall describe the property, including money, and shall state the time and place of the public sale at which the property may be purchased by the highest bidder. Until the date of the sale, the property may be claimed at the office of the law enforcement officer. If ownership of the property is proved, the property shall be turned over to the owner and the sale shall be canceled.

434.183. Sale of unclaimed property

Sec. 3. The law enforcement officer shall conduct the sale of the unclaimed property and shall deposit the proceeds of the sale, after deducting the cost of the sale, with the village or township treasurer to the credit of the village or township general fund.

P.A.1979, No. 214, § 3, Imd. Eff. Jan. 15, 1980.

434.184. Claims after sale of property

Sec. 4. (1) If, within 6 months after the sale, the owner of the property files with the village council or township board of trustees a claim for the property and proves a right to the property, the village council or township board of trustees shall direct the treasurer who received the proceeds of the sale of that property to pay the owner the amount of proceeds. The village council or township board of trustees shall not approve any claims filed more than 6 months after the sale.

(2) A law enforcement officer disposing of property as provided in this act shall not be liable to the owner of that property.

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28.257 Reporting domestic assaults to department of state police

Sec. 7. The chief of police of each city or village, the chief of police of each township having a police department, and the sheriff of each county within this state shall report to the department of state police, in a manner prescribed by the department, the following information related to crimes of domestic assault:

(a) The number of assaults reported which involve an adult and a minor and the disposition of those offenses.

(b) The number of assaults reported which involve 2 male adults or 2 female adults and the disposition of those offenses.

(c) The number of assaults reported which involve 1 male adult and 1 female adult and the disposition of those offenses.

(d) The number of assaults reported which involve a person and his or her spouse and the disposition of those offenses.

(e) Other statistics the director of the department of state police considers necessary to obtain accurate and reliable data on the incidence of domestic assault in this state.

DOMESTIC VIOLENCE

Caption editorially supplied

Law Review Commentaries

Legislative responses to domestic violence in Michigan. Eva S. Buzawa and Carl G. Buzawa, 25 Wayne L.Rev. 859 (1979).

P.A.1978, No. 389, Eff. Oct. 1

AN ACT to provide for the prevention and treatment of domestic violence; to develop and establish policies, procedures, and standards for providing domestic violence assistance programs and services; to create a domestic violence prevention and treatment board and prescribe its powers and duties; to establish a domestic violence prevention and treatment fund and provide for its use; and to prescribe powers and duties of the department of social services.

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400.1501. Definitions

Sec. 1. As used in this act:

(a) "Board" means the domestic violence prevention and treatment board created in section 2.¹

(b) "Department" means the department of social services.

(c) "Domestic violence" means a violent physical attack or fear of violent physical attack perpetrated by an assailant against a victim; in which the victim is a person assaulted by or threatened by assault by his or her spouse or former spouse or an adult person or emancipated minor assaulted by an adult person of the opposite sex with whom the assaulted person cohabits or formerly cohabited; and in which the victim and assailant are or were involved in a consenting, sexual relationship.

(d) "Fund" means the domestic violence prevention and treatment fund created in section 5.²

(e) "Prime sponsor" means a county, city, village, or township of this state, or a combination thereof, or a private, nonprofit association or organization.

400.1502. Domestic violence prevention and treatment board; membership; terms; chairperson; quorum; per diem and expenses

Sec. 2. (1) The domestic violence prevention and treatment board is created in the department. The board shall consist of 7 members, all of whom shall have experience in an area related to the problems of domestic violence. The members shall be appointed by the governor with the advice and consent of the senate.

(2) The term of office of a member shall be 3 years, except that: of the members first appointed, 2 shall serve for a term of 1 year, 2 shall serve for a term of 2 years, and 1 shall serve for a term of 3 years; and of the 2 additional members appointed under this 1979 amendatory act, 1 shall serve for a term of 2 years and 1 shall serve for a term of 3 years. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term.

(3) The governor shall designate 1 member of the board to serve as chairperson. A majority of the members shall constitute a quorum.

(4) The per diem compensation of the board and the schedule for reimbursement of expenses shall be established annually by the legislature.

P.A.1978, No. 389, § 2, Eff. Oct. 1. Amended by P.A.1979, No. 127, § 1, Imd. Eff. Oct. 26.

1979 Amendment. In subsec. (1) in the second sentence substituted "7" for "5"; in subsec. (2) in the first sentence added "; and of the two additional members appointed under this 1979 amendatory act, 1 shall serve for a term of 2 years and 1 shall serve for a term of 3 years".

400.1503. Domestic violence prevention and treatment board; meetings; freedom of information

Sec. 3. (1) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

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P.A.1978, No. 389, § 3, Eff. Oct. 1.

400.1504. Domestic violence prevention and treatment board; powers and duties

Sec. 4. The department shall provide staff to enable the board to carry out the following powers and duties:

(a) Coordinate and monitor programs and services funded under this act for the prevention of domestic violence and the treatment of victims of domestic violence.

(b) Develop standards for the implementation and administration of services and procedures to prevent domestic violence and to provide services and programs for victims of domestic violence.

(c) Provide planning and technical assistance to prime sponsors for the development, implementation, and administration of programs and services for the prevention of domestic violence and the treatment of victims of domestic violence.

(d) Conduct research to develop and implement effective means for preventing domestic violence and treating victims of domestic violence.

(e) Provide assistance to the department of state police in developing a system for monitoring and maintaining a uniform reporting system to provide accurate statistical data on domestic violence.

(f) Coordinate educational and public informational programs for the purpose of developing appropriate public awareness regarding the problems of domestic violence; encourage professional persons and groups to recognize and deal with problems of domestic violence; to make information about the problems of domestic violence available to the public and organizations and agencies which deal with problems of domestic violence; and encourage the development of community programs to prevent domestic violence and provide services to victims of domestic violence.

(g) Study and recommend changes in civil and criminal procedures which will enable victims of domestic violence to receive equitable and fair treatment under the law.

(h) Advise the legislature and governor on the nature, magnitude, and priorities of the problem of domestic violence and the needs of victims of domestic violence; and recommend changes in state programs, statutes, policies, budgets, and standards which will reduce the problem and improve the condition of victims.

P.A.1978, No. 389, § 4, Eff. Oct. 1.

400.1505. Domestic violence prevention and treatment fund; criteria for awarding grants or contracts

Sec. 5. The domestic violence prevention and treatment fund is established within the department. Subject to the approval of the board, the department shall administer the fund for the purposes described in this act and shall establish qualifying criteria for awarding grants or contracts under section 6 and may specify conditions for each grant or contract.

P.A.1978, No. 389, § 5, Eff. Oct. 1.

400.1506. Award of grants or contracts

Sec. 6. (1) Subject to the approval of the board, the department may award a grant or enter into a contract, using money in the fund, for the support of local programs designed to do any of the following:

(a) Establish or maintain a shelter program as provided in section 7.¹

(b) Develop and establish a training program for persons engaged in areas related to the problems of domestic violence.

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(c) Develop and implement effective means for the prevention and treatment of domestic violence.

(2) A prime sponsor which desires to receive a grant from, or to enter into a contract with, the department shall make application in the manner prescribed by the department.

(3) The department shall not award a grant to a prime sponsor or enter into a contract with a prime sponsor, unless the prime sponsor agrees that the state share payable for programs and services financed with state funds received under the authority of this act shall not exceed 40% of the total cost of the domestic violence prevention and treatment programs and services provided by that prime sponsor during the term of the award or contract. The total cost of programs and services may include the fair market value of in-kind contributions received by a prime sponsor. A prime sponsor shall not receive more than \$55,000.00 under this act during a fiscal year.

P.A.1978, No. 389, § 6, Eff. Oct. 1.

Section 400.1507.

400.1507. Shelter programs

Sec. 7. (1) A prime sponsor may receive funds under this act to establish or maintain a shelter program for victims of domestic violence and their dependent children. Emergency shelter may be provided directly at a facility operated by the prime sponsor or indirectly at transient or residential facilities available in the community. A shelter program shall either provide not less than 3 of the following services or assist the victim in obtaining information and referral services to not less than 3 of the following services:

- (a) Crisis and support counseling for victims of domestic violence and their dependent children.
- (b) Emergency health care services.
- (c) Legal assistance.
- (d) Financial assistance.
- (e) Housing assistance.
- (f) Transportation assistance.
- (g) Child care services.

(2) To the extent possible, a prime sponsor which establishes a shelter program under this section shall utilize services provided by county community mental health programs established under chapter 2 of Act No. 258 of the Public Acts of 1974, as amended, being sections 330.1200 to 330.1246 of the Michigan Compiled Laws.

P.A.1978, No. 389, § 7, Eff. Oct. 1.

400.1508. Preferences and considerations in awarding grants or contracts

Sec. 8. (1) In awarding a grant or contract under this act, the department and board shall give preference to a prime sponsor which establish domestic violence emergency shelter services utilizing voluntary personnel or available community resources.

(2) In awarding a grant or contract under this act, the department and board shall consider the needs of the people residing throughout the state and shall provide for the equitable, statewide funding of programs for the prevention of domestic violence and the treatment of victims of domestic violence.

P.A.1978, No. 389, § 8, Eff. Oct. 1.

400.1509. Evaluation of programs and services

Sec. 9. The department annually shall evaluate the domestic violence prevention and treatment programs and services provided by a prime sponsor which is awarded a grant or contract under this act. The evaluation shall include a description of the programs and

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services provided, an analysis of the effectiveness of the programs and services, and an accounting of the use of state funds for the programs and services.

P.A.1978, No. 389, § 9, Eff. Oct. 1.

400.1510. Agreements for receipt of funds

Sec. 10. The department may enter into agreements with the federal government or private foundations, trusts, or other legal entities for the receipt of funds consistent with this act.

* * *

CONTEMPT—RESTRAINING OR ENJOINING SPOUSE

PUBLIC ACT NO. 228

HOUSE BILL NO. 4563

AN ACT to amend section 1715 of Act No. 236 of the Public Acts of 1961, entitled as amended "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts; and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," being section 600.1715 of the Michigan Compiled Laws; and to add section 2950.

The People of the State of Michigan enact:

Section 1. Section 1715 of Act No. 236 of the Public Acts of 1961, being section 600.1715 of the Michigan Compiled Laws, is amended and section 2950 is added to read as follows:

M.C.L.A. § 600.1715

Sec. 1715. (1) Except as otherwise provided by law, punishment for contempt may be a fine of not more than \$250.00, or imprisonment which, except in those cases where the commitment is for the omission to perform an act or duty which is still within the power of the person to perform shall not exceed 30 days, or both, in the discretion of the court.

(2) If the contempt consists of the omission to perform some act or duty which is still within the power of the person to perform, the imprisonment shall be terminated when the person performs the act or duty or no longer has the power to perform the act or duty which shall be specified in the order of commitment and pays the fine, costs, and expenses of the proceedings which shall be specified in the order of commitment.

M.C.L.A. § 600.2950

Sec. 2950. (1) A person may, by commencing an independent action for the purpose of obtaining relief under this section, or by joining a claim to an existing action, petition the circuit court to restrain or enjoin a spouse, a former spouse, or a person residing or having resided in the same household as the victim from doing 1 or more of the following:

- (a) Entering onto premises.
 - (b) Assaulting, beating, molesting, or wounding a named person.
 - (c) Removing minor children from the person having legal custody of the children, except as otherwise authorized by a custody or visitation order issued by a court of competent jurisdiction.
- (2) A court shall not issue an injunction under subsection (1)(a) if all of the following apply:
- (a) The defendant is not the spouse of the moving party.

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- (b) The defendant has a property interest in the premises.
- (c) The moving party has no property interest in the premises.
- (3) An order issued under subsection (1) which complies with the requirements of section 15b of chapter IV of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being section 764.15b of the Michigan Compiled Laws, shall be enforceable under that section.
- (4) An order issued under subsection (1) which meets the requirements of subsection (3) shall be served personally on the person to be restrained.
- (5) The clerk of the court issuing an order under subsection (1) which meets the requirements of subsection (3) shall file a true copy and proof of service of the order with the law enforcement agency having jurisdiction of the area in which the moving party resides.
- (6) A person who refuses or fails to comply with an order issued under subsection (1) which meets the requirements of subsection (3) is subject to the criminal contempt powers of the court and, if found guilty, shall be imprisoned for not more than 90 days and may be fined not more than \$500.00.
- (7) An order issued under subsection (1) shall also be enforceable under chapter 17.¹
- (8) This section shall not apply if the moving party has filed an action for annulment, divorce, or separate maintenance and may obtain a preliminary injunctive order against a spouse or an injunctive order against the other party under section 14 of chapter 84 of the Revised Statutes of 1846, being section 552.14 of the Michigan Compiled Laws.

CRIMINAL PROCEDURE—ARREST WITHOUT WARRANT— VIOLATION OF ORDER ENJOINING OR RESTRAINING SPOUSE

PUBLIC ACT NO. 230

HOUSE BILL NO. 4214

AN ACT to amend section 15b of chapter IV of Act No. 175 of the Public Acts of 1927, entitled as amended "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," as added by Act No. 471 of the Public Acts of 1980, being section 764.15b of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 15b of chapter IV of Act No. 175 of the Public Acts of 1927, as added by Act No. 471 of the Public Acts of 1980, being section 764.15b of the Michigan Compiled Laws, is amended to read as follows:

CHAPTER IV.

M.C.L.A. § 764.15b

Sec. 15b. (1) A peace officer, without a warrant, may arrest and take into custody a person when the peace officer has reasonable cause to believe that all of the following exist:

- (a) One of the following injunctive orders:

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- (i) An injunctive order issued pursuant to section 14 of chapter 84 of the Revised Statutes of 1846, as amended, being section 552.14 of the Michigan Compiled Laws.
- (ii) An injunctive order issued by the circuit court as authorized by law and stating on its face the period of time for which the order is valid and specifically restraining or enjoining a spouse, a former spouse, or a person residing or having resided in the same household as the victim from entering onto premises, from assaulting, beating, molesting, or wounding a named person, or from removing minor children from the person having legal custody of the children.
- (b) A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the moving party resides.
- (c) The person named in the order has received notice of the injunctive order.
- (d) The person named in the order is acting in violation of the order. A person is in violation of the order if that person commits 1 or more of the following acts specifically enumerated in the order to restrain or enjoin the person from:
 - (i) Assaulting, beating, molesting, or wounding a named person.
 - (ii) Removing minor children from a person having legal custody of the children, in violation of custody and visitation orders as issued by the court.
 - (iii) Entering onto premises.
- (e) The order states on its face that a violation of its terms subjects the person to criminal contempt of court and, if found guilty, the person shall be imprisoned for not more than 90 days and may be fined not more than \$500.00.

(2) A person arrested pursuant to this section shall be brought before the circuit court having jurisdiction in the cause within 24 hours after arrest to answer to a charge of contempt for violation of the injunctive order, at which time the court shall do each of the following:

- (a) Set a time certain for a hearing on the alleged violation of the injunctive order within 72 hours after arrest, unless extended by the court on the motion of the arrested person.
- (b) Set a reasonable bond pending a hearing of the alleged violation of the injunctive order.
- (c) Notify the party who has procured the injunctive order and direct the party to appear at the hearing and give evidence on the charge of contempt.

(3) In circuits where the circuit court judge may not be present or available within 24 hours after arrest, a person arrested pursuant to this section shall be taken before the district court within 24 hours after arrest, at which time the district court shall order the defendant to appear before the circuit court of the county for a hearing on the charge. The district court shall set bond for the person.

(4) The circuit court for each county of this state shall have jurisdiction to conduct contempt proceedings based upon a violation of an injunctive order as provided in this section, which is issued by the circuit court in any county of this state. The court of arraignment shall notify the circuit court which issued the injunctive order that the issuing court may request that the defendant be returned to that county for violating the injunctive order. If the circuit court which issued the injunctive order requests that the defendant be returned to that county to stand trial, then the requesting county shall bear the cost of transporting the defendant to that county.

(5) Upon receipt of a true copy and proof of service of an injunctive order issued pursuant to this section, the law enforcement agency shall enter the order into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, Act No. 163 of the Public Acts of 1974, being sections 28.211 to 28.216 of the Michigan Compiled Laws.

Category	Citation
1. Victim Compensation Program	299B.01 et seq.
1.1 Responsible Agency	299B.05(1)
1.2 Eligible Claimants	299B.02(9), 299B.03
1.3 Losses Covered	299B.02(7)
1.4 Minimum and Maximum Award	299B.03(2)(f), 299B.04(2),(3)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	299B.03(2)(a)
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Minnesota Statutes Annotated

CHAPTER 299B. CRIME VICTIMS REPARATIONS

Sec.	Title.	Sec.	Title.
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299B.02.	Eligibility for reparations.	299B.11.	Medical privilege.
299B.03.	Amount of reparations.	299B.12.	Enforcement of board's orders.
299B.04.	Crime victims reparations board.	299B.13.	Department of corrections: restitution.
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299B.09.	Reparations; how paid.		

299B.02. Definitions

For the purposes of sections 299B.01 to 299B.16 the following terms shall have the meanings given them:

- (1) "Accomplice" means any person who would be held criminally liable for the crime of another pursuant to section 609.05.
- (2) "Board" means the crime victims reparation board established by section 299B.05.
- (3) "Claimant" means a person entitled to apply for reparations pursuant to sections 299B.01 to 299B.16.
- (4) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under sections 299B.01 to 299B.16 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 two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under sections 299B.01 to 299B.16;
 - (c) social security, medicare, and medicaid;
 - (d) state required temporary non-occupational disability insurance;
 - (e) worker's compensation;
 - (f) wage continuation programs of any employer;
 - (g) proceeds of a contract of insurance payable to the victim for economic loss which he sustained because of the crime;
 - (h) a contract providing prepaid hospital and other health care services, or benefits for disability; or
 - (i) any private source as a voluntary donation or gift.

The term does not include a life insurance contract.

(5) (a) "Crime" means conduct that

- (i) occurs or is attempted in this state,
- (ii) poses a substantial threat of personal injury or death, and
- (iii) is included within the definition of "crime" in Minnesota Statutes 1971, section 609.02, subdivision 1, or would be included within that definition but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.

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(b) A crime occurs whether or not any person is prosecuted or convicted but the conviction of a person whose acts give rise to the claim is conclusive evidence that a crime was committed unless an application for rehearing, appeal, or petition for certiorari is pending or a new trial or rehearing has been ordered.

(c) "Crime" does not include conduct arising out of the use of a motor vehicle, as defined in section 169.01, subdivision 2, an aircraft or watercraft unless

- (i) the conduct was intended to cause personal injury or death, or
- (ii) the use of the motor vehicle, aircraft or watercraft in the commission of a felony was a proximate cause of the victim's injury or death.

(6) "Dependent" means any person who was dependent upon a deceased victim for support at the time of the crime.

(7) "Economic loss" means actual economic detriment incurred as a direct result of injury or death.

(a) In the case of injury the term is limited to:

- (i) reasonable expenses incurred for necessary medical, chiropractic, hospital, rehabilitative, and dental products, services, or accommodations, including ambulance services, drugs, appliances and prosthetic devices;
- (ii) reasonable expenses incurred for psychological or psychiatric products, services or accommodations where the nature of the injury or the circumstances of the crime are such that the treatment is necessary to the rehabilitation of the victim;
- (iii) loss of income the victim would have earned had he not been injured; and
- (iv) reasonable expenses incurred for substitute child care or household services to replace those the victim would have performed had he not been injured.

(b) In the case of death the term is limited to:

- (i) reasonable expenses incurred for funeral, burial or cremation;
- (ii) reasonable expenses for medical, chiropractic, hospital, rehabilitative, psychological and psychiatric services, products or accommodations which were incurred prior to the victim's death and for which the victim's survivors or estate are liable;
- (iii) loss of support, including contributions of money, products or goods, but excluding services which the victim would have supplied to his dependents if he had lived; and
- (iv) reasonable expenses incurred for substitute child care and household services to replace those which the victim would have performed for the benefit of his dependents if he had lived.

(8) "Injury" means actual bodily harm including pregnancy and mental or nervous shock.

(9) "Victim" means a person who suffers personal injury or death as a direct result of

- (a) a crime;
- (b) the good faith effort of any person to prevent a crime; or
- (c) the good faith effort of any person to apprehend a person suspected of engaging in a crime.

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299B.03. Eligibility for reparations

Subdivision 1. Except as provided in subdivision 2, the following persons shall be entitled to reparations upon a showing by a preponderance of the evidence that the requirements for reparations have been met:

- (a) a victim who has incurred economic loss;
- (b) a dependent who has incurred economic loss;
- (c) the estate of a deceased victim if the estate has incurred economic loss;
- (d) any other person who has incurred economic loss by purchasing any of the products, services, and accommodations described in section 299B.02, clause (7), for a victim;
- (e) the guardian, guardian ad litem, conservator or authorized agent of any of these persons.

Subd. 2. No reparations shall be awarded to a claimant otherwise eligible if:

- (a) the crime was not reported to the police within five days of its occurrence or, if it could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made;
- (b) the victim or claimant failed or refused to cooperate fully with the police and other law enforcement officials;
- (c) the victim is the spouse of or a person living in the same household with the offender or his accomplice or the parent, child, brother or sister of the offender or his accomplice unless the board determined that the interests of justice otherwise require in a particular case;
- (d) the claimant was the offender or an accomplice of the offender or an award to the claimant would unjustly benefit the offender or an accomplice; or
- (e) no claim was filed with the board within one year of victim's injury or death but if it could not have been made within that period, then the claim can be made within one year of the time when a claim could have been made;
- (f) the claim is less than \$100.

299B.04. Amount of reparations

Reparations shall equal economic loss except that:

- (1) reparations shall be reduced to the extent that economic loss is recouped from a collateral source or collateral sources;
- (2) reparations shall be reduced to the extent, if any, that the board deems reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims and by the first \$100 of economic loss; and
- (3) reparations paid to all claimants suffering economic loss as the result of the injury or death of any one victim shall not exceed \$25,000.

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Laws 1974, c. 463, § 4. Amended by Laws 1977, c. 356, § 1.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

1977 Amendment. Added "or collateral sources" at the end of clause (1) and increased the maximum reparation from \$10,000 to \$25,000. Laws 1977, c. 356, § 3, read:

"This act applies to claims arising as a result of crimes committed or attempted on or after July 1, 1977."

Law Review Commentaries

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974, 44 Hennepin Lawyer 4.

Victims Reparations Act: A preliminary analysis. 1976, 2 Wm. Mitchell L. Rev. 187.

Notes of Decisions

1. In general

Argument that defendant would be required to make restitution based on losses of all victims without being given opportunity to be heard on issue of what amount would be appropriate was premature where such amount had not been determined. State v. Kennedy, 1982, 327 N.W.2d 3.

Notwithstanding that record made at time defendant entered guilty pleas did not make it clear what parties meant scope of restitution to be, record made at time of sentencing hearing established that parties contemplated that restitution would be based on losses of all victims of underlying criminal scheme, not merely those named in three counts to which defendant pleaded guilty. Id.

299B.05. Crime victims reparations board

Subdivision 1. There is created in the department of public safety, for budgetary and administrative purposes, the crime victims reparations board, which shall consist of three members appointed by the governor. One of the members shall be designated as chairman by the governor and serve as such at his pleasure. At least one member shall be a person who is admitted to the bar of this state, and at least one member shall be a medical or osteopathic physician licensed to practice in this state.

Subd. 2. Repealed by Laws 1976, c. 134, § 79, eff. July 1, 1976.

Subd. 2a. The membership terms, compensation, removal of members, and filling of vacancies on the board shall be as provided in section 15.0575.

Subd. 3. Members of the board shall serve part time.

299B.06. Powers and duties of the board

Subdivision 1. Duties. In addition to carrying out any duties specified elsewhere in sections 299B.01 to 299B.16 or in other law, the board shall:

- (a) provide all claimants with an opportunity for hearing pursuant to Minnesota Statutes, Chapter 14;
- (b) establish and maintain a principal office and other necessary offices and appoint employees and agents as necessary and fix their duties;
- (c) promulgate within 90 days following the effective date of Laws 1974, Chapter 463 rules to implement sections 299B.01 to 299B.16, including rules governing the method of practice and procedure before the board, prescribing the manner in which applications for reparations shall be made, and providing for discovery proceedings;
- (d) publicize widely the availability of reparations and the method of making claims; and
- (e) prepare and transmit annually to the governor and the legislature a report of its activities including the name of each claimant, a brief description of the facts in each case, the amount of reparation awarded, and a statistical summary of claims and awards made and denied.

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Subd. 2. Powers. In addition to exercising any powers specified elsewhere in sections 299B.01 to 299B.16 or other law, the board upon its own motion or the motion of a claimant or the attorney general may:

- (a) issue subpoenas for the appearance of witnesses and the production of books, records, and other documents;
- (b) administer oaths and affirmations and cause to be taken affidavits and depositions within and without this state;
- (c) take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge;
- (d) order a mental or physical examination of a victim or an autopsy of a deceased victim provided that notice is given to the person to be examined and that the claimant and the attorney general receive copies of any resulting report;
- (e) suspend or postpone the proceedings on a claim if a criminal prosecution arising out of the incident which is the basis of the claim has been commenced or is imminent;
- (f) request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to perform its duties under sections 299B.01 to 299B.16;
- (g) grant emergency reparations pending the final determination of a claim if it is one with respect to which an award will probably be made and undue hardship will result to the claimant if immediate payment is not made; and
- (h) reconsider any decision granting or denying reparations or determining their amount.

299B.07. Determination of claims

Subdivision 1. A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board.

Subd. 2. The board member to whom the claim is assigned shall examine the papers filed in support of the claim and cause an investigation to be conducted into the validity of the claim.

Subd. 3. The board member to whom a claim is assigned may decide the claim in favor of a claimant in the amount claimed on the basis of the papers filed in support of it and the report of the investigation of such claim. If the board member is unable to decide such claim upon the basis of the papers and report, he shall order a hearing.

Subd. 4. After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the board member to whom the claim was assigned shall make a decision either granting an award or deny the claim.

Subd. 5. The board member making a decision shall file with the board a written report setting forth such decision and his reasons therefor. The board shall notify the claimant and furnish him a copy of the report.

Laws 1974, c. 463, § 7.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

Law Review Commentaries

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin, Oct.-Nov. 1974, 44 Hennepin Lawyer 4.

Victims Reparations Act: A preliminary analysis. 1976, 2 Wm. Mitchell L. Rev. 187.

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299B.071. Attorneys fees; limitation for representation before board

The board may limit the fee charged by any attorney for representing a claimant before the board.

Added by Laws 1975, c. 246, § 2.

Law Review Commentaries

Victims Reparations Act: A preliminary analysis. 1976, 2 Wm. Mitchell L. Rev. 187.

299B.08. Consideration of decisions by full board

Subdivision 1. The claimant may, within 30 days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the board for consideration of the decision by the full board.

Subd. 2. Any member of the board may, within 30 days after the filing of the report, make an application in writing to the board for consideration of the decision by the full board.

Subd. 3. The board shall treat all claims considered pursuant to this section as contested cases within the meaning of Minnesota Statutes, Chapter 14.

299B.09. Reparations; how paid

Reparations may be awarded in a lump sum or in installments in the discretion of the board. The amount of any emergency award shall be deducted from the final award, if a lump sum, or prorated over a period of time if the final award is made in installments. Reparations are exempt from execution or attachment except by persons who have supplied services, products or accommodations to the victim as a result of the injury or death which is the basis of the claim. The board, in its discretion may order that all or part of the reparations awarded be paid directly to these suppliers.

299B.10. Subrogation

The state shall be subrogated, to the extent of reparations awarded, to all the claimant's rights to recover benefits or advantages for economic loss from a source which is or, if readily available to the victim or claimant would be, a collateral source. Nothing in this section shall limit the claimant's right to bring a cause of action to recover for other damages.

299B.11. Medical privilege

There is no privilege as to communication or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under sections 299B.01 to 299B.16 in which that condition is an issue. Nothing contained in this section shall be interpreted to abridge the attorney-client privilege.

299B.12. Enforcement of board's orders

If a person refuses to comply with an order of the board or asserts a privilege 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 district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a mental or physical examination.

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Laws 1974, c. 463, § 12.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

299B.13. Department of corrections; restitution

The department of corrections may, as a means of assisting in the rehabilitation of persons committed to their care, establish programs and procedures whereby such persons may contribute toward restitution of those persons injured as a consequence of their criminal acts.

Laws 1974, c. 463, § 13.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

Law Review Commentaries

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974, 44 Hennepin Lawyer 4.

Victims Reparations Act: A preliminary analysis. 1976, 2 Wm. Mitchell L. Rev. 187.

Library References

Criminal Law §1220.

C.J.S. Criminal Law § 2007.

299B.14. Use of record of claim; evidence

Neither a record of the proceedings on a claim, a decision of the board, nor the fact that an award has been made or denied shall be admissible as evidence in any criminal or civil action against the alleged offender, except an action by the state on its subrogation claim.

Laws 1974, c. 463, § 14. Amended by Laws 1979, c. 173, § 2, eff. May 23, 1979.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

1979 Amendment. Substituted "except" for "including" effective May 23, 1979, and applying to all actions arising on or after that date.

Law Review Commentaries

Crime Victim's Reparations Act of 1974: An overview. Douglas A. Hedin. Oct.-Nov. 1974, 44 Hennepin Lawyer 4.

299B.15. Law enforcement agencies; duty to inform victims of right to file claim

All law enforcement agencies investigating crimes shall provide forms to each person who may be eligible to file a claim pursuant to sections 299B.01 to 299B.16 and to inform them of their rights hereunder. All law enforcement agencies shall obtain from the board and maintain a supply of all forms necessary for the preparation and presentation of claims.

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299B.16. Fraudulent claims; penalty

Any person who knowingly makes a false claim under sections 299B.01 to 299B.16 shall be guilty of a gross misdemeanor.

Laws 1974, c. 463, § 16.

Laws 1974, c. 463, § 17, provided that this act shall apply to claims arising as a result of crimes committed or attempted on or after July 1, 1974.

299B.17. Limiting commercial exploitation of crimes; payment of victims

Subdivision 1. For purposes of this section "crime" means an offense which is a felony under the laws of Minnesota.

Subd. 2. A legal entity that contracts with an individual person or the representative or assignee of a person who has been convicted of a crime in this state, or found not guilty by reason of insanity, regarding (a) the reenactment of the crime, by way of a movie, book, newspaper or magazine article, radio or television presentation, or live or recorded entertainment of any kind, or (b) the expression of the person's thoughts, feelings, opinions or emotions about the crime, shall notify the crime victims reparations board of the existence of the contract and pay over to the crime victims reparations board any moneys owed to that person or his representatives by virtue of the contract. If the crime occurred in this state, the proportion payable is one hundred percent. If the crime occurred in another jurisdiction having a law applicable to the case which is substantially similar to this section, the proportion payable is zero and this section does not apply. In all other cases, the proportion payable is that which fairly can be allocated to commerce in this state. This section does not apply to crimes occurring outside the United States. The board shall deposit the moneys pursuant to subdivision 7 and assign the amount received in each case for the benefit of any victim of crimes committed by the person. The moneys shall be paid by the board to any victim or the legal representative of a victim if (1) the person is convicted of the crime or found not guilty by reason of insanity, and (2) the claimant, within five years of the date of payment to the board in the case, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against the person or his representatives. Notwithstanding any provision of law for the timely bringing of an action, an action may be brought pursuant to this section within a five year period which begins to run on the date payment is made to the board in a case; provided that once the person has been discharged from his sentence by court order or upon expiration of sentence, this section shall not apply.

Subd. 3. When the board receives a payment pursuant to this section, it shall attempt to notify any known victims of the crime and shall publish a notice of that fact in a newspaper having general circulation in the county where the crime was committed. The expenses of notification shall be paid from the amount received for that case.

Subd. 4. When the board has made payments to or on behalf of a crime victim pursuant to sections 299B.01 to 299B.16, to the extent of payment made, it is subrogated to any claim or judgment of the victim or his representative against the offender.

Subd. 5. Upon a showing by that person convicted of a crime or found not guilty by reason of insanity, or his representative, that five years have elapsed from the date of payment to the board in the case, and further that no actions are pending against him pursuant to this section, the board shall immediately pay over to him any moneys in the account related to the case.

Subd. 6. Notwithstanding any other provision of this section, the board shall make payments to a person convicted of crime or found not guilty by reason of insanity from

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the account of amounts received with reference to that person upon the order of a court of competent jurisdiction after a showing by that person that the moneys shall be used for the reasonable costs of defense in the appeal of his criminal conviction or in civil proceedings pursuant to this section.

Subd. 7. All moneys received by the board pursuant to this section shall be deposited in the state treasury, credited to a special account, and are appropriated to the board for the purposes of this section. Money in the special account may be invested pursuant to section 11A.25. When so invested, any interest or profit shall accrue to, and any loss be borne by, the special account. The board shall allocate money in the special account to each case pursuant to this section.

Subd. 8. Any action taken, whether by way of execution of a power of attorney, creation of corporate or trust entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

Added by Laws 1979, c. 234, § 1, eff. May 30, 1979. Amended by Laws 1980, c. 607, art. 14, § 46, eff. April 24, 1980.

* * *

Section 1. Minnesota Statutes 1982, section 241.26, subdivision 5, is amended to read:

Subd. 5. **Earnings; work release account.** The net earnings of each inmate participating in a work release program provided by this section shall be collected by or forwarded to the commissioner of corrections under rules established by him and deposited by the commissioner in the state treasury and, to be credited to the "work release account", which account is hereby established, to the account of such the inmate. Such The moneys shall be and remain under the control of the commissioner for the sole benefit of such the inmate, subject to disbursement by the commissioner for the following ~~purpose purposes~~ and in the following order:

(1) The cost of such the inmate's keep as determined by the provision of subdivision 7, which moneys shall be deposited in the general fund of the state treasury if such the inmate is housed in a state correctional institution, or shall be paid to the appropriate city or county treasurer if such the inmate is housed in a city or county facility;

(2) Necessary travel expense to and from work and other incidental expenses of the inmate;

(3) Support of inmate's dependents, if any;

(4) Court-ordered restitution;

(5) After the above expenditures, the inmate shall have discretion to direct payment of the balance, if any, upon proper proof of personal legal debts;

(5) (6) The balance, if any, shall be disbursed to the inmate as provided in section 243.24, subdivision 1.

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All moneys in the "work release account" established by this subdivision are appropriated annually to the commissioner of corrections for the purposes of the work release program.

Sec. 2. Minnesota Statutes 1982, section 243.23, subdivision 3, is amended to read:

Subd. 3. **Exceptions.** Notwithstanding sections 241.01, subdivision 8, 241.26, subdivision 5, and 243.24, subdivision 1, the commissioner shall promulgate rules for the disbursement of funds earned under subdivision 1 for the support of families and dependent relatives of the respective inmates, for the payment of court-ordered restitution, and for the discharge of any legal obligations arising out of litigation under this subdivision. An inmate of an adult correctional facility under the control of the commissioner is subject to actions for the enforcement of support obligations and reimbursement of any public assistance rendered the dependent family and relatives. The commissioner may conditionally release an inmate who is a party to an action under this subdivision and provide for his detention in a local detention facility convenient to the place of the hearing when he is not engaged in preparation and defense.

Sec. 7. Minnesota Statutes 1982, section 631.425, subdivision 5, is amended to read:

Subd. 5. **Earnings.** The earnings of the prisoner may be collected by the sheriff, probation department, welfare board or suitable person or agency designated by the court. From such the earnings, the person or agency designated to collect them may pay the cost of the prisoner's maintenance, both inside and outside the jail, but the charge for maintenance inside the jail shall not exceed the legal daily allowance for board allowed the sheriff for ordinary prisoners, and, to the extent directed by the court, pay the support of his dependents, if any, and court costs and fines, and court-ordered restitution, if any. Any balance shall be retained until his discharge when it shall be paid to him.

* * *

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357.22. Witnesses

The fees to be paid to witnesses shall be as follows:

- (1) For attending in any action or proceeding in any court or before any officer, person, or board authorized to take the examination of witnesses, \$10 for each day;
- (2) For travel to and from the place of attendance, to be estimated from his residence, if within the state, or from the boundary line of the state where he crossed it, if without the state, 24 cents per mile.

No person is obliged to attend as a witness in any civil case unless one day's attendance and travel fees are paid or tendered him in advance.

357.24. Criminal cases

Witnesses for the state in criminal cases shall receive the same fees for travel and attendance as provided in section 357.22, and judges may, in their discretion, allow like fees to witnesses attending in behalf of any defendant. In addition these witnesses shall receive reasonable expenses actually incurred for meals, loss of wages and child care, not to exceed \$40 per day. In courts these witness fees shall be certified and paid in the same manner as jurors.

* * *

CHAPTER 611A. RIGHTS OF VICTIMS OF CRIMES [NEW]

GENERAL RIGHTS

Sec.

611A.01. Definitions.

Sec.

611A.02. Victim service notification.

611A.03. Plea agreements; notification.

611A.04. Victim's right to request restitution.

611A.06. Right to notice of release.

611A.01. Definitions

For the purposes of sections 611A.01 to 611A.04 and 611A.06:

- (a) "Crime" means conduct that is included within the definition of "crime" in section 609.02, subdivision 1, or would be included within that definition but for the fact that (i) the person engaging in the conduct lacked capacity to commit the crime under the laws of this state, or (ii) the act was alleged or found to have been committed by a juvenile;
- (b) "Victim" means a natural person who incurs loss or harm as a result of a crime. If the victim is deceased, "victim" means the deceased's surviving spouse or next of kin; and
- (c) "Juvenile" has the same meaning as given to the term "child" in section 260.015, subdivision 2.

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611A.02. Victim service notification

The commissioner of corrections, in cooperation with the executive director of the crime victims reparations board, shall develop a plan to provide victims with information concerning victim services in the geographic area where the crime occurred. This information shall include, but need not be limited to, information about available victim crisis centers, programs for victims of sexual assault, victim witness programs, elderly victims projects, victim assistance hotlines, incest abuse programs, and domestic violence shelters and programs.

The plan shall take into account the fact that some counties currently have informational service systems and victim or witness services or programs.

This plan shall be presented to the appropriate standing committees of the legislature no later than February 1, 1984.

Laws 1983, c. 262, art. 1, § 2, eff. Aug. 1, 1983.

Laws 1983, c. 262, applicable to crimes committed on or after August 1, 1983, see note under § 611A.01.

C.J.S. Criminal Law § 2007.

Library References

Criminal Law §1220.

611A.03. Plea agreements; notification

Subdivision 1. Plea agreements; notification of victim. Prior to the entry of the factual basis for a plea pursuant to a plea agreement recommendation, a prosecuting attorney shall make a reasonable and good faith effort to inform the victim of:

- (a) The contents of the plea agreement recommendation; and
- (b) His right to be present at the sentencing hearing and to express in writing any objection he has to the agreement or to the proposed disposition. If the victim is not present when the court considers the recommendation, but has communicated his objections to the prosecuting attorney, the prosecuting attorney shall make these objections known to the court.

Subd. 2. Notification duties. A prosecuting attorney satisfies the requirements of subdivision 1 by notifying:

- (a) The victim's legal guardian or guardian ad litem; or
- (b) The three victims the prosecuting attorney believes to have suffered the most, if there are more than three victims of the offense.

611A.04. Victim's right to request restitution

Subdivision 1. Request; decision. A victim of a crime has the right to request that restitution be considered as part of the disposition of a criminal charge or juvenile delinquency proceeding against the offender. The request for restitution shall be made by the victim in writing in affidavit form, describing the items or elements of loss and itemizing the total dollar amounts of restitution claimed, and the reasons justifying these amounts, if the request is for monetary or property restitution. In order to be considered by the court, the request must be received by the clerk of the appropriate court at least three business days before the sentencing or dispositional hearing. The clerk of court shall provide copies of this request to the prosecutor and the offender at least 24 hours before the sentencing or dispositional hearing.

The court shall grant or deny restitution, and shall state on the record its reasons for its decision on restitution if a request for restitution has been made.

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Subd. 2. Procedures. The offender shall make restitution payments to the clerk of the county, municipal, or district court of the county in which the restitution is to be paid.

Subd. 3. Effect of order for restitution. A decision for or against restitution in any criminal or juvenile proceeding is not a bar to any civil action by the victim or by the state pursuant to section 299B.10 against the offender. The offender shall be given credit, in any order for judgment in favor of a victim in a civil action, for any restitution paid to the victim for the same injuries for which the judgment is awarded.

Laws 1983, c. 262, art. 1, § 4, eff. Aug. 1, 1983.

Laws 1983, c. 262, applicable to crimes committed on or after August 1, 1983, see note under § 611A.01.

C.J.S. Criminal Law § 2007.

Library References

Criminal Law §1220.

611A.06. Right to notice of release

The commissioner of corrections or other custodial authority shall make a good faith effort to notify the victim that the offender is to be released from imprisonment or incarceration, other than for work release, prior to the release if the victim has mailed to the commissioner of corrections or to the head of the facility in which the offender is confined a written request for this notice. The commissioner or other custodial authority complies with this section if he mails the notice of impending release to the victim at the address which the victim has most recently provided to him in writing.

* * *

609.498. Tampering with a witness

Subdivision 1. Tampering with a witness in the first degree. Whoever does any of the following is guilty of tampering with a witness in the first degree and may be sentenced as provided in subdivision 1a:

(a) intentionally prevents or dissuades or intentionally attempts to prevent or dissuade by means of force or threats of injury to person, family, or property, a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law;

(b) intentionally threatens to cause injury to person, family, or property in retaliation against a person who was summoned as a witness at any trial, proceeding, or inquiry authorized by law, within a year following that trial, proceeding, or inquiry;

(c) intentionally prevents or dissuades or attempts to prevent or dissuade, by means of force or threats of injury to person, family, or property, a person from providing information to law enforcement authorities concerning a crime; or

(d) intentionally threatens to cause injury to person, family, or property in retaliation against a person who has provided information to law enforcement authorities concerning a crime within a year of that person providing the information.

Subd. 1a. Penalty. Whoever violates subdivision 1 may be sentenced to imprisonment for not more than five years or to payment of a fine not to exceed \$5,000.

Subd. 2. Tampering with a witness in the second degree. Whoever does any of the following is guilty of tampering with a witness in the second degree and may be sentenced as provided in subdivision 3:

(a) intentionally prevents or dissuades or intentionally attempts to prevent or dissuade by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), a person who is or may become a witness from attending or testifying at any trial, proceeding, or inquiry authorized by law; or

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(b) intentionally prevents or dissuades or attempts to prevent or dissuade by means of any act described in section 609.27, subdivision 1, clause (3), (4), or (5), a person from providing information to law enforcement authorities concerning a crime.

Subd. 3. Sentence. Whoever violates subdivision 2 may be sentenced to imprisonment for not more than one year or to payment of a fine not to exceed \$1,000.

* * *

Sec. 3. Minnesota Statutes 1982, section 609.115, subdivision 1, is amended to read:

Subdivision 1. Presentence investigation. When a defendant has been convicted of a misdemeanor, or gross misdemeanor, or felony, the court may, and when the defendant has been convicted of a felony, the court shall, before sentence is imposed, cause a presentence investigation and written report to be made to the court concerning the defendant's individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the offense and the harm caused thereby by it to others and to the community. If the court so directs, the report shall include an estimate of the prospects of the defendant's rehabilitation and recommendations as to the sentence which should be imposed. In misdemeanor cases the report may be oral.

When a defendant has been convicted of a felony, and before sentencing, the court shall cause a sentencing worksheet to be completed to facilitate the application of the Minnesota sentencing guidelines. If a presentence investigation is ordered by the court, the worksheet shall be submitted as part of the presentence investigation report. If a presentence investigation is not ordered by the court, the worksheet shall nonetheless be submitted.

The investigation shall be made by a probation officer of the court, if there is one, otherwise by the commissioner of corrections.

Pending the presentence investigation and report, the court with the consent of the commissioner may commit the defendant to the custody of the commissioner of corrections who shall return the defendant to the court when the court so orders.

Presentence investigations shall be conducted and summary hearings held upon reports and upon the sentence to be imposed upon the defendant in accordance with this section, Minnesota Statutes, Section section 244.10, upon its effective date, and Rule 27 of the rules of criminal procedure.

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Sec. 4. Minnesota Statutes 1982, section 609.115, is amended by adding a subdivision to read:

Subd. 1b. Additional contents. The presentence investigation report shall also include the following information relating to victims:

(a) A summary of the damages or harm and any other problems generated by the criminal occurrence;

(b) A concise statement of what disposition the victim deems appropriate for the defendant or juvenile court respondent, including reasons given, if any, by the victim in support of his opinion; and

(c) An attachment to the report, consisting of the victim's written objections, if any, to the proposed disposition if the victim provides the officer conducting the presentence investigation with this written material within a reasonable time prior to the disposition.

For the purposes of this section, "victim" has the meaning given to it in section 611A.01.

Sec. 5. Minnesota Statutes 1982, section 609.115, is amended by adding a subdivision to read:

Subd. 1c. Notice to victim. The officer conducting the presentence or predispositional report shall make reasonable and good faith efforts to contact the victim of that crime and to provide that victim with the following information: (i) the charge or juvenile court petition to which the defendant has been convicted or pleaded guilty, or the juvenile respondent has admitted in court or has been found to have committed by the juvenile court, and of any plea agreement between the prosecution and the defense counsel; (ii) his right to request restitution pursuant to section 611A.04; (iii) the time and place of the sentencing or juvenile court disposition and his right to be present; and (iv) his right to object in writing to the court, prior to the time of sentencing or juvenile court disposition, to the proposed sentence or juvenile dispositional alternative, or to the terms of the proposed plea agreement. To assist the victim in making a recommendation under clause (iv), the officer shall provide the victim with information about the court's options for sentencing and other dispositions. Failure of the officer to comply with this subdivision does not give any rights or grounds for post conviction or post juvenile disposition relief to the defendant or juvenile court respondent, nor does it entitle a defendant or a juvenile court respondent to withdraw a plea of guilty.

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609.522. Return of stolen property to owners

Subdivision 1. Photographic record. Photographs of property, as defined in section 609.52, subdivision 1, over which person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully, are competent evidence if the photographs are admissible into evidence under all rules of law governing the admissibility of photographs into evidence. The photographic record, when satisfactorily identified, is as admissible in evidence as the property itself.

Subd. 2. Record of property. The photographs may bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property taken, the name of the accused, the name of the arresting law enforcement officer, the date of the photograph, and the signature of the photographer.

Subd. 3. Return of property. A law enforcement agency which is holding property over which a person is alleged to have exerted unauthorized control or to have otherwise obtained unlawfully may return that property to its owner if:

(a) The appropriately identified photographs are filed and retained by the law enforcement agency;

(b) Satisfactory proof of ownership of the property is shown by the owner;

(c) A declaration of ownership is signed under penalty of perjury; and

(d) A receipt for the property is obtained from the owner upon delivery by the law enforcement agency.

Subd. 4. If the recovered property has a value in excess of \$150, then the owner shall retain possession for at least 14 days to allow the defense attorney to examine the property.

* * *

PROGRAM TO AID VICTIMS OF SEXUAL ATTACKS

241.51. Development of statewide program; definition; services

Subdivision 1. The commissioner of corrections shall develop a community based, statewide program to aid victims of reported sexual attacks.

Subd. 2. As used in sections 241.51 to 241.53, a "sexual attack" means any non-consensual act of rape, sodomy, or indecent liberties.

Subd. 3. The program developed by the commissioner of corrections may include, but not be limited to, provision of the following services:

(a) Voluntary counseling by trained personnel to begin as soon as possible after a sexual attack is reported. The counselor shall be of the same sex as the victim and shall, if requested, accompany the victim to the hospital and to other proceedings concerning the alleged attack, including police questioning, police investigation, and court proceedings. The counselor shall also inform the victim of hospital procedures, police and court procedures, the possibility of contracting venereal disease, the possibility of pregnancy, expected emotional reactions and any other relevant information; and shall make appropriate referrals for any assistance desired by the victim.

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(b) Payment of all costs of any medical examinations and medical treatment which the victim may require as a result of the sexual attack if the victim is not otherwise reimbursed for these expenses or is ineligible to receive compensation under any other law of this state or of the United States.

Laws 1974, c. 578, § 1.

Title of Act:

An Act relating to crime and criminals; requiring the commissioner of corrections to develop a program to aid victims of sexual attacks. Laws 1974, c. 578.

Library References

Criminal Law § 1222.

C.J.S. Criminal Law § 2008 et seq.

241.52. Powers of commissioner

In addition to developing the statewide program, the commissioner of corrections may:

(a) Assist and encourage county attorneys to assign prosecuting attorneys trained in sensitivity and understanding of victims of sexual attacks;

(b) Assist the peace officers training board and municipal police forces to develop programs to provide peace officers training in sensitivity and understanding of victims of sexual attacks; and encourage the assignment of trained peace officers of the same sex as the victim to conduct all necessary questioning of the victim;

(c) Encourage hospital administrators to place a high priority on the expeditious treatment of victims of sexual attacks; and to retain personnel trained in sensitivity and understanding of victims of sexual attacks.

Laws 1974, c. 578, § 2.

241.53. Funding; pilot programs

The commissioner of corrections shall seek funding from the governor's commission on crime prevention and control at the earliest possible date for purposes of sections 241.51 to 241.53. In addition, the commissioner of corrections shall seek and utilize all other available funding resources to establish pilot community programs to aid victims of sexual attacks before December 1, 1974.

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CRIME VICTIM CRISIS CENTER

241.55. Crime victim crisis center

Subdivision 1. For the purposes of sections 241.55 to 241.58, "center" means a crime victim crisis center providing services to victims of crime.

Subd. 2. The commissioner of corrections, not later than January 1, 1978, shall establish at least two operational centers. The commissioner of corrections may contract with a public or private agency for the purposes of planning, implementing and evaluating the centers established herein.

Laws 1977, c. 314, § 1.

241.56. Planning

The commissioner of corrections, while developing the center plan as provided in section 241.55, shall evaluate and determine factors relating to the procedural and substantive needs of the centers.

Laws 1977, c. 314, § 2.

241.57. Functions

The centers shall:

(a) Provide direct crisis intervention to crime victims;

(b) Provide transportation for crime victims to assist them in obtaining necessary emergency services;

(c) Investigate the availability of insurance or other financial resources available to the crime victims;

(d) Refer crime victims to public or private agencies providing existing needed services;

(e) Encourage the development of services which are not already being provided by existing agencies;

(f) Coordinate the services which are already being provided by various agencies;

(g) Facilitate the general education of crime victims about the criminal justice process;

(h) Educate the public as to programs' availability;

(i) Encourage educational programs which will serve to reduce victimization and which will diminish the extent of trauma where victimization occurs;

(j) Other appropriate services.

Laws 1977, c. 314, § 3.

Library References

Criminal Law § 1222.

C.J.S. Criminal Law § 2008 et seq.

241.58. Evaluation

Within three years of May 28, 1977 effective date of this act, the commissioner of corrections shall evaluate the operation of the centers. This evaluation shall determine the centers' impact in assisting crime victims, its impact on the criminal justice system, the nature of community attitudes generated by the centers, the necessity for maintaining the two existing centers, the desirability of establishing additional centers and propose alternative means to accomplish the purposes of the act in all areas of the state.

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BATTERED WOMEN

241.61. Definitions

Subdivision 1. For the purposes of sections 241.61 to 241.66, the following terms have the meanings given.

Subd. 2. "Battered woman" means a woman who is being or has been assaulted by her spouse, other male relative, or by a male with whom she is residing or has resided in the past.

Subd. 3. "Emergency shelter services" include, but are not limited to, secure crisis shelters for battered women and housing networks for battered women.

Subd. 4. "Support services" include, but are not limited to, advocacy services, legal services, counseling services, transportation services, child care services, and 24 hour information and referral services.

Subd. 5. "Commissioner" means the commissioner of the department of corrections or his designee.

Laws 1977, c. 428, § 1, eff. June 3, 1977.

241.62. Pilot programs

Subdivision 1. **Programs designated.** The commissioner shall designate four or more pilot programs to provide emergency shelter services and support services to battered women and shall award grants to the pilot programs. At least two pilot programs shall be designated in the metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington and Carver counties. At least one pilot program shall be designated in a city located outside of the metropolitan area, and at least one pilot program shall be designated in a location accessible to a predominantly rural population.

Subd. 2. **Applications.** Any public or private nonprofit agency may apply to the commissioner for designation as a pilot program to provide emergency shelter services and support services to battered women. The application shall be submitted in a form approved by the commissioner by rule, and shall include:

(a) a proposal for the provision of emergency shelter services and support services for battered women;

(b) a proposed budget;

(c) evidence of the integration of the uniform method of data collection and program evaluation established by the director pursuant to section 241.63 into the proposed program;

(d) evidence of the participation of the local law enforcement agencies and courts, county welfare agencies, local boards or departments of health, and other interested agencies or groups in the development of the application; and

(e) any other content the commissioner may, by rule, require.

Subd. 3. **Duties of grantees.** Every public or private nonprofit agency which receives a grant to provide emergency shelter services and support services to battered women shall comply with all rules of the commissioner related to the administration of the pilot programs.

Subd. 4. **Educational programs.** In addition to designating four pilot programs to provide emergency shelter services and support services, the commissioner shall award grants for the development and implementation of education programs designed to promote public and professional awareness of the problems of battered women. Any public or private nonprofit agency may apply to the commissioner for an education grant. The application shall be submitted in a form approved by the commissioner by rule. In addition, education grant moneys may be used by the commissioner to produce educational and promotional materials to encourage the development and utilization of emergency

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shelter services. Every public or private nonprofit agency which receives an education grant shall comply with all rules of the commissioner related to the administration of education programs.

Subd. 5. **Classification of data collected by grantees.** Personal history information and other information collected, used or maintained by a grantee from which the identity of any battered woman may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the grantee shall maintain the data in accordance with the provisions of chapter 13.

Laws 1977, c. 428, § 2, eff. June 3, 1977. Amended by Laws 1978, c. 732, §§ 1 to 3; Laws 1981, c. 311, § 39; Laws 1981, 1st Sp., c. 4, art. 1, § 14; Laws 1982, c. 545, § 24.

1978 Amendment. Added "or more" as descriptive of the four programs to be designated, and "at least" as descriptive of the one or two pilot programs mentioned in the last three sentences of subd. 1. Added the next to the last sentence to subd. 4 as well as the provisions of subd. 5.

Laws 1978, c. 732 did not contain a specific effective date, but did include appropriation items. See § 645.02 for method of determining the effective date.

1981 Amendments. Laws 1981, c. 311, § 39, directed statutory cross reference changes generally throughout the statutes to correct refer-

ences to provisions formerly numbered as sections 15.1611 to 15.1699:

Laws 1981, 1st Sp., c. 4, art. 1 contained corrections of statutes cited within various sections throughout the statutes.

1982 Amendment. Laws 1982, c. 545, § 24, directed statutory cross reference changes generally throughout the statutes to correct references to provisions formerly numbered as 15.1611 to 15.1699, including those contained in Laws 1981, c. 311.

Library References

Husband and Wife § 102.

C.J.S. Husband and Wife §§ 219, 220.

241.63. Duties of commissioner

The commissioner shall:

(a) Review applications for designation as a pilot program, and designate four or more pilot programs pursuant to section 241.62, subdivision 1;

(b) Review applications from and award grants to public or private nonprofit agencies which submit proposals to develop and implement education programs pursuant to section 241.62, subdivision 4;

(c) Appoint the members of the advisory task force created under section 241.64; and provide staff and other administrative services to the advisory task force;

(d) Appoint a project coordinator to perform the duties set forth in section 241.65;

(e) Design and implement a uniform method of collecting and evaluating data on battered women and of evaluating the programs funded under section 241.62;

(f) Provide technical aid to applicants in the design and implementation of the programs funded under section 241.62;

(g) Promulgate all rules necessary to implement the provisions of sections 241.61 to 241.66 and 256D.05, subdivision 3, including emergency rules; and

(h) Report to the legislature on January 1, 1978, January 1, 1979, and November 15, 1979, on the programs funded under section 241.62 and report to the legislature by January 1, 1979 on the feasibility of creating similar programs for men.

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241.64. Advisory council

Subdivision 1. Creation. Within 60 days after the effective date of sections 241.61 to 241.66, the commissioner shall appoint a nine member advisory council to advise him on the implementation of sections 241.61 to 241.66. The provisions of section 15.059 shall govern the terms removal of members, and expiration of the advisory council. Council members shall not receive per diem, but shall receive expenses in the same manner and amount as state employees.

Subd. 2. Membership. Persons appointed shall be knowledgeable in the fields of health, law enforcement, social services or the law. Five members of the advisory council shall be representatives of community or governmental organizations which provide services to battered women, and four members of the advisory council shall be public members.

Subd. 3. Duties. The advisory council shall:

(a) recommend to the commissioner the names of five applicants for the position of project coordinator.

(b) advise the commissioner on the rules promulgated pursuant to section 241.63;

(c) review and comment on applications received by the commissioner for designation as a pilot program and applications for education grants; and

(d) advise the project coordinator in the performance of his duties in the administration and coordination of the programs funded under section 241.62.

Laws 1977, c. 428, § 4, eff. June 3, 1977. Amended by Laws 1983, c. 260, § 50, eff. July 1, 1983.

1983 Amendment. Substituted "council" for "task force" throughout the section and added the provision relating to per diem and expenses in subd. 1.

Library References

Husband and Wife §102.

C.J.S. Husband and Wife §§ 219, 220.

241.65. Project coordinator

The commissioner shall appoint a project coordinator. In appointing the project coordinator the commissioner shall give due consideration to the list of applicants submitted to him by the advisory task force pursuant to section 241.64, subdivision 3, clause (a). The project coordinator shall administer the funds appropriated for sections 241.61 to 241.66 and 256D.05, subdivision 3, coordinate the programs funded under section 241.62, and perform other duties as the commissioner may assign to him. The project coordinator shall serve at the pleasure of the commissioner in the unclassified service.

Laws 1977, c. 428, § 5, eff. June 3, 1977.

241.66. Data collection

Subdivision 1. Form prescribed. The commissioner shall, by rule, prescribe a uniform form and method for the collection of data on battered women. The method and form of data collection shall be designed to document the incidence of assault on women by their spouses, male relatives or other males with whom they are residing or have resided in the past. All data collected by the commissioner pursuant to this section shall be summary data within the meaning of section 13.02, subdivision 19.

Subd. 2. Mandatory data collection. Every hospital licensed pursuant to sections 144.50 to 144.58, every physician licensed to practice in this state, every public health nurse, every social services agency, every community health agency, and every local law enforcement agency shall collect data related to battered women in the form required by

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rule of the commissioner. The data shall be collected and transmitted to the commissioner at such times as he shall, by rule, require.

Subd. 3. Immunity from liability. Any person participating in good faith and exercising due care in the collection and transmission of data pursuant to this section shall have immunity from any liability, civil or criminal, that otherwise might result by reason of his action.

* * *

CHAPTER 518B. DOMESTIC ABUSE

Sec.

518B.01. Domestic abuse act.

Laws 1979, c. 214, § 2, provides for an effective date of May 26, 1979, for this chapter to apply to all acts of domestic abuse on or after that date.

518B.01. Domestic abuse act.

Subdivision 1. Short title. This section may be cited as the domestic abuse act.

Subd. 2. Definitions. As used in this section, the following terms shall have the meanings given them:

(a) "Domestic abuse" means: (i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (ii) criminal sexual conduct, within the meaning of sections 609.342, 609.343, 609.344, or 609.345, committed against a minor family or household member by an adult family or household member; or (iii) intrafamilial sexual abuse, within the meaning of sections 609.364 to 609.3644, committed against a minor family or household member by an adult family or household member.

(b) "Family or household members" means: spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

Subd. 3. Court jurisdiction. An application for relief under this section may be filed in the court having jurisdiction over dissolution actions. In a jurisdiction which utilizes referees in dissolution actions, the court or judge may refer actions under this section to a referee to take and report the evidence therein in the same manner and subject to the same limitations as is provided in section 518.13. Actions under this section shall be given docket priorities by the court.

Subd. 4. Order for protection. There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(a) A petition for relief under this section may be made by any family or household member on behalf of himself or herself or on behalf of minor family or household members.

(b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

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(d) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section by any person not represented by counsel.

(e) The court shall advise a petitioner under clause (d) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to Minnesota Statutes, Section 563.01 and shall assist with the writing and filing of the motion and affidavit.

Subd. 5. Hearing on application. Upon receipt of the petition, the court shall order a hearing which shall be held not later than 14 days from the date of the order. Personal service shall be made upon the respondent not less than five days prior to the hearing. In the event that service cannot be made, the court may set a new date.

Subd. 6. Relief by the court. Upon notice and hearing, the court may provide relief as follows:

(a) Restrain any party from committing acts of domestic abuse;

(b) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;

(c) On the same basis as is provided in chapter 518, award temporary custody or establish temporary visitation with regard to minor children of the parties;

(d) On the same basis as is provided in chapter 518, establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to chapter 518;

(e) Provide counseling or other social services for the parties, if married, or if there are minor children;

(f) Order the abusing party to participate in treatment or counseling services;

(g) Order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff or constable, as provided by this section.

Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

Subd. 7. Temporary order. Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte temporary order for protection, pending a full hearing, and granting relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic abuse;

(b) Excluding any party from the dwelling they share or from the residence of the other except by further order of the court.

An ex parte temporary order for protection shall be effective for a fixed period not to exceed 14 days. A full hearing, as provided by this section, shall be set for not later than seven days from the issuance of the temporary order. The respondent shall be served forthwith, a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

Subd. 8. Service of order. Any order issued under this section shall be personally served upon the respondent.

Subd. 9. Assistance of sheriff in service or execution. When an order is issued under this section upon request of the petitioner, the court shall order the sheriff or constable to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection.

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Subd. 10. Right to apply for relief. (a) A person's right to apply for relief shall not be affected by his or her leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it deems necessary in exceptional cases.

Subd. 11. Modification of order. Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Subd. 12. Real estate. Nothing in this section shall affect the title to real estate.

Subd. 13. Copy to law enforcement agency. An order for protection granted pursuant to this section shall be forwarded by the clerk of court within 24 hours to the local law enforcement agency with jurisdiction over the residence of the applicant.

Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order for protection issued pursuant to this section.

Subd. 14. Violation of an order for protection. (a) Whenever an order for protection is granted pursuant to this section, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor.

(b) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order granted pursuant to this section restraining the person or excluding the person from the residence, if the existence of the order can be verified by the officer.

(c) A violation of an order for protection shall also constitute contempt of court and be subject to the penalties therefor.

629.341. Probable cause arrest; domestic violence; immunity from liability

Subdivision 1. Arrest. Notwithstanding the provisions of section 629.34 or any other law or rule to the contrary, a peace officer may arrest without a warrant a person anywhere, including at his place of residence if the peace officer has probable cause to believe the person within the preceding four hours has assaulted, threatened with a dangerous weapon, or placed in fear of immediate bodily harm his spouse, former spouse, other person with whom he resides or has formerly resided, although the assault did not take place in the presence of the peace officer.

Subd. 2. Immunity. Any peace officer acting in good faith and exercising due care in the making of an arrest pursuant to subdivision 1 shall have immunity from civil liability that otherwise might result by reason of his action.

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Subd. 3. Notice of rights. The peace officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of the legal rights and remedies available. The notice shall include furnishing the victim a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county attorney to file a criminal complaint. You also have the right to go to court and file a petition requesting an order for protection from domestic abuse which could include the following: (a) an order restraining the abuser from further acts of abuse; (b) an order directing the abuser to leave your household; (c) an order preventing the abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; (e) an order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so."

The notice shall include the resource listing, including telephone number, for the area battered women's shelter, to be designated by the department of corrections.

Subd. 4. Report required. Whenever a peace officer investigates an allegation that an incident described in subdivision 1 has occurred, whether or not an arrest is made, the officer shall make a written police report of the alleged incident. The officer must submit the report to his supervisor or other person to whom the employer's rules or policies require reports of similar allegations of criminal activity to be made.

Subd. 5. Training. The board of peace officer standards and training shall provide a copy of this section to every law enforcement agency in this state on or before June 30, 1983.

Upon request of the board of peace officer standards and training to the bureau of criminal apprehension, the subject matter of at least one training course must include instruction in the subject matter of domestic abuse. Every basis skills course required in order to obtain initial licensure as a peace officer must, after January 1, 1985, include at least three hours of training in handling domestic violence cases.

* * *

13.56. Sexual assault data

Subdivision 1. Definitions. (a) "Community based program" means any office, institution, or center offering assistance to victims of sexual assault and their families through crisis intervention, medical, and legal accompaniment and subsequent counseling.

(b) "Sexual assault counselor" means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault.

(c) "Victim" means a person who consults a sexual assault counselor for the purpose of securing advice, counseling, or assistance concerning a mental, physical, or emotional condition caused by a sexual assault.

(d) "Sexual assault communication data" means all information transmitted in confidence between a victim of sexual assault and a sexual assault counselor and all other information received by the sexual assault counselor in the course of providing assistance to the victim. The victim shall be deemed the subject of sexual assault communication data.

Subd. 2. Classification. All sexual assault communication data is classified as private data on individuals.

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595.02. Competency of witnesses

Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as follows:

(10) Sexual assault counselors may not be compelled to testify about any opinion or information received from or about the victim without the consent of the victim. However, a counselor may be compelled to identify or disclose information in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 and 626.557.

"Sexual assault counselor" for the purpose of this section means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice, counseling or assistance to victims of sexual assault.

DOMESTIC ABUSE

(d) Upon the filing of an affidavit by the petitioner or any peace officer, alleging that the respondent has violated any order for protection granted pursuant to this section, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why he should not be found in contempt of court and punished therefor. The hearing may be held by the court in any county in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

A peace officer is not liable under section 609.43, clause (1), for a failure to perform a duty required by clause (b) of this subdivision.

Subd. 15. Admissibility of testimony in criminal proceeding. Any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding.

Subd. 16. Other remedies available. Any proceeding under this section shall be in addition to other civil or criminal remedies.

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	99-37-1 et seq.
2.1 Sentencing Option	47-7-47(4); 99-37-3(1); 99-37-5(2)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	47-7-49 (community service revolving fund); 99-20-1 et seq. (community service restitution); 99-37-5
3. Esrow and Forfeiture of Offender Profits	
4. Witness Fees	25-7-47, 25-7-57
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	97-9-55
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	99-20-9 (recommendation of victim re placement of offender on community service restitution program)
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	43-45-1, 43-45-7, 43-45-21
12.4 Abuse, Neglect, Exploitation - Protective Services	43-45-11 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	93-21-1, 93-21-15
14.2 Domestic Violence Shelters	93-21-101 et seq.
14.3 Domestic Violence Reporting	93-21-25
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	93-21-111 (domestic violence statistics)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	93-21-25, 93-21-109 (domestic abuse reports)
15.4 Sexual Assault Counselor Privilege	

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Mississippi Code Annotated

§ 47-7-47. Earned probation program; restitution to crime victim.

(1) The judge of any circuit court may place an offender on a program of earned probation after a period of confinement as set out herein and the judge may seek the advice of the commissioner of the department of corrections and shall direct that such defendant be under the supervision of the department of corrections.

(4) In the event the court should determine to place any person on probation or earned probation, the court may order such person to make appropriate restitution to any victim of his crime or to society through the performance of reasonable work for the benefit of the community.

* * *

§ 47-7-49. Creation of community service revolving fund; payments to fund by offender on probation, parole, or earned probation.

(1) Any offender on probation or released from a facility of the department of corrections on parole or earned probation who remains under the supervision of the department of corrections and after the effective date of this section shall pay to the department the sum of ten dollars (\$10.00) per month by certified check or money order. The commissioner of corrections, or his designee, shall deposit such payments received into a special fund in the state treasury, which is hereby created, to be known as the community service revolving fund. Expenditures from such fund shall be made for the establishment of restitution and satellite centers, and for the development of computerized accounting and personnel systems for the department of corrections.

However, from and after July 1, 1980, fifty percent (50%) of such payments shall be deposited in the community service revolving fund and fifty percent (50%) of such payments shall be deposited in the discharged offenders' revolving fund, as created under section 47-5-155, Mississippi Code of 1972, and shall be used to supplement those amounts paid to discharged, paroled or pardoned offenders from the department of corrections. The warden of the penitentiary shall establish equitable criteria for the making of such supplemental payments which shall not exceed two hundred dollars (\$200.00) for any offender. Such supplemental

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payments shall be subject to the approval of the commissioner. The state treasurer shall not be required to replenish the discharged offenders' revolving fund for the supplemental payments made to discharged, paroled or pardoned offenders.

(2) The offender may be imprisoned until such payments are made if the offender is financially able to make such payments and the court in the county where the offender resides so finds, subject to the limitations hereinafter set out. The offender shall not be imprisoned if the offender is financially unable to make such payments and so states to the court in writing, under oath, and the court so finds.

(3) If such payments remain unsatisfied under the provisions of subsection (1) after ninety (90) days, the court shall render a judgment for the said payments, and such judgment shall be enrolled as other judgments at law and shall be collected by the county prosecuting attorney, and if there be no county prosecuting attorney, by the district attorney, as other judgments at law; and upon enrolling, such judgment shall be a lien upon and bind all the property of the offender within the county where so enrolled, and such judgment shall not be a bar to any sentence earlier imposed.

* * *

CHAPTER 20 [New]

Community Service Restitution

SEC.

- 99-20-1. Short title; purpose.
- 99-20-3. Participation in community service restitution program.
- 99-20-5. Qualifications for participation in program.
- 99-20-7. Determining persons eligible for participation; review of district attorney's files.
- 99-20-9. Notification of eligible persons; request for sentence to program; recommendations of victim.
- 99-20-11. Agreement to and acceptance of sentence by defendant; conditional discharge.
- 99-20-13. Participant informed of possible criminal sentence; consequences of failure to perform community service sentence.
- 99-20-15. Written agreement between program participant and department of corrections.
- 99-20-17. Failure to complete sentence; consequences.
- 99-20-19. Availability of program.

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§ 99-20-1. Short title; purpose.

This chapter shall be known as the Mississippi Community Service Restitution Act. The purpose of this chapter is to provide an alternative method of punishment in cases in which the defendant would have otherwise been sentenced to a term of imprisonment.

SOURCES: Laws, 1983, ch. 447, § 1, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

§ 99-20-3. Participation in community service restitution program.

Any defendant who qualifies for participation as set out in this chapter, shall be entitled to participate in a community service restitution program. Any convicted defendant who, having been sentenced prior to July 1, 1983, and who qualifies for participation in the program herein established, may petition the circuit court of the county of his conviction to be sentenced under the provisions of this chapter.

SOURCES: Laws, 1983, ch. 447, § 2, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

§ 99-20-5. Qualifications for participation in program.

In order to qualify for participation in a community service restitution program, the defendant must: (a) be a first offender, (b) be convicted of a nonviolent property offense that would constitute a felony, (c) have had a verifiable residence in Mississippi for at least three (3) months and (d) not have drug, alcohol or emotional problems so serious that he or she appears unlikely to be able to meet the obligations of the community service sentence.

§ 99-20-7. Determining persons eligible for participation; review of district attorney's files.

Department of corrections personnel shall review the incoming

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files in the office of district attorney in the circuit court district in which they are operating, to determine which, if any, of the persons charged are eligible for participation in the community service restitution program.

SOURCES: Laws, 1983, ch. 447, § 4, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

Cross references—

As to general powers and duties of department of corrections, see § 47-5-10.

§ 99-20-9. Notification of eligible persons; request for sentence to program; recommendations of victim.

When a case appears to meet the eligibility criteria established in section 99-20-5, the department of corrections representative shall notify the district attorney of that district and the defense attorney.

The department of corrections representative, the district attorney and the defense attorney shall request the court to sentence the defendant to the community service restitution program. The department of corrections representative shall present to the court its basis for requesting the community service sentence. In addition, the victim, if any, of the crime for which the defendant is charged shall be asked to comment in writing as to whether or not the defendant shall be allowed to enter the program. The court shall not be bound by such recommendations.

SOURCES: Laws, 1983, ch. 447, § 5, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

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§ 99-20-11. Agreement to and acceptance of sentence by defendant; conditional discharge.

If a determination is made to use the community service sentence, the defendant must agree to and accept the determination.

Any defendant who is sentenced to the community service restitution program shall receive a conditional discharge from the presiding court and shall be sentenced to perform a certain number of hours of unpaid community service, in the sentencing court's discretion.

SOURCES: Laws, 1983, ch. 447, § 6, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

§ 99-20-13. Participant informed of possible criminal sentence; consequences of failure to perform community service sentence.

Upon sentencing to the community service restitution program, the judge shall instruct the defendant as to what the sentence would have been had he or she not been placed in the community service restitution program, and shall inform the defendant as to consequences of failure to perform the community service sentence.

SOURCES: Laws, 1983, ch. 447, § 7, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

§ 99-20-15. Written agreement between program participant and department of corrections.

If the court imposes the community service sentence, a written agreement shall be immediately executed by the defendant and the department of corrections representative. The agreement shall

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contain such provisions and conditions as the department of corrections and the court shall deem just and appropriate.

SOURCES: Laws, 1983, ch. 447, § 8, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

Cross references—

As to general powers and duties of department of corrections, see § 47-5-10.

§ 99-20-17. Failure to complete sentence; consequences.

Upon failure to complete the community service sentence, the case shall be restored to the court calendar for resentencing and a warrant for the arrest of the defendant shall immediately be issued.

SOURCES: Laws, 1983, ch. 447, § 9, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

§ 99-20-19. Availability of program.

This alternative method of punishment shall be available only in circuit court districts where the department of corrections commissioner certifies that such a program exists, can be enforced and that space is available in such program.

SOURCES: Laws, 1983, ch. 447, § 10, eff from and after July 1, 1983, and repealed from and after July 1, 1987.

Editor's Note—

Section 11 of Laws, 1983, ch. 447, eff from and after July 1, 1983, and repealed from and after July 1, 1987, provides as follows:

"SECTION 11. This act shall take effect and be in force from and after July 1, 1983, and shall stand repealed from and after July 1, 1987; provided, however, that persons who are sentenced to a community service restitution program prior to July 1, 1987, shall be allowed to complete such sentence under the terms and conditions established by this act regardless of the date such sentence is completed."

* * *

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CHAPTER 37 [New] Restitution to Victims of Crimes

New Sections Added

SEC.

99-37-1. Definitions.

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99-37-3. Imposition and amount of restitution.

[21 Miss Supp]

99-37-5. Payment—order—enforcement.

99-37-7. Default in payment—contempt.

99-37-9. Term of imprisonment for contempt.

99-37-11. Relief from payment.

99-37-13. Enforcement of judgment.

99-37-15. Resumption of payment upon release from custody.

99-37-17. Civil actions by victims; evidence; damages.

99-37-19. Restitution centers.

99-37-21. Powers and duties of public welfare and corrections departments as to restitution centers.

§ 99-37-1. Definitions.

As used in this chapter:

(a) "Criminal activities" shall mean any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.

(b) "Pecuniary damages" shall mean all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.

(c) "Restitution" shall mean full, partial or nominal payment of pecuniary damages to a victim.

(d) "Victim" shall mean any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities. "Victim" shall not include any coparticipant in the defendant's criminal activities.

SOURCES: Laws, 1978, ch. 400, § 1, eff from and after July 1, 1978.

Cross references—

As to restitution to owner for malicious injury or death of certain animals, see § 97-41-15.

Research and Practice References—

1978 Mississippi Supreme Court Review: Torts. 50 Miss L J 137, March 1979.

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§ 99-37-3. Imposition and amount of restitution.

(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim.

(2) In determining whether to order restitution which may be complete, partial or nominal, the court shall take into account:

(a) the financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;

(b) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and

(c) the rehabilitative effect on the defendant of the payment of restitution and the method of payment.

(3) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall, at the time of sentencing, allow him to be heard on such issue.

(4) If the court determines that restitution is inappropriate or undesirable, an order reciting such finding shall be entered, which should also state the underlying circumstances for such determination.

SOURCES: Laws, 1978, ch. 400, § 2, eff from and after July 1, 1978.

Cross references—

As to resumption of payment upon release from custody, see § 99-37-15.

As to power to punish for contempt, see §§ 9-1-17, 9-11-15.

As to power of court to determine conditions of probation, see § 47-7-35.

As to restitution to owner of stolen livestock as part of penalty for crime, see § 97-17-53.

Research and Practice References—

21 Am Jur 2d, Criminal Law §§ 599 to 601 (imposition of fines).

22 CJS, Criminal Law § 402(1)(c) (power of appellate court to order restitution).

24B CJS, Criminal Law §§ 2004 to 2007.

8 Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure, Forms 301, 304 (notice and motion to set aside excessive fine or term of imprisonment).

1978 Mississippi Supreme Court Review: Torts. 50 Miss L J 137, March 1979.

ALR Annotations—

Counsel's reference in criminal case to wealth, poverty, or financial status of defendant or victim as grounds for mistrial, new trial, or reversal. 36 ALR3d 839.

§ 99-37-5. Payment—order—enforcement.

(1) When a defendant is sentenced to pay a fine or costs or ordered to make restitution, the court may order payment to be made forthwith or within a specified period of time or in specified installments. If a defendant is sentenced to a term of imprisonment, an order of payment of a fine, costs or restitution shall not be enforceable during the period of imprisonment unless the court expressly finds that the defendant has assets to pay all or part of the amounts ordered at the time of sentencing.

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(2) When a defendant sentenced to pay a fine or costs or ordered to make restitution is also placed on probation or imposition or execution of sentence is suspended, the court may make payment of the fine or costs or the making of restitution a condition of probation or suspension of sentence. Such offenders shall make restitution payments directly to the victim. As an alternative to a contempt proceeding under sections 99-37-7 through 99-37-13, the intentional refusal to obey the restitution order or a failure by a defendant to make a good faith effort to make such restitution may be considered a violation of the defendant's probation and may be cause for revocation of his probation or suspension of sentence.

SOURCES: Laws, 1978, ch. 400, § 3; 1979, ch. 462, § 5, eff from and after July 1, 1979.

Cross references—

As to requiring restitution concomitant with probation, see § 47-7-48.

Research and Practice References—

21 Am Jur 2d, Criminal Law § 565 (conditions of probation), §§ 599 to 601 (imposition of fines).

24B CJS, Criminal Law §§ 2004 to 2007.

8 Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure, Forms 301, 304 (notice and motion to set aside excessive fine or term of imprisonment).

1978 Mississippi Supreme Court Review: Torts. 50 Miss LJ 137, March 1979.

1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss LJ 763, December 1979.

ALR Annotations—

Probation conditioned on restitution in connection with application for, or receipt of, public assistance. 92 ALR2d 458.

Construction of clause of Federal Probation Act (18 USC § 3651) that, in placing defendant on probation upon terms and conditions, defendant may be required to make restitution. 97 ALR2d 793.

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution. 73 ALR3d 1240.

Propriety of probation which requires defendant convicted of crime of violence to make reparation to injured victim. 79 ALR3d 976.

Validity of requirement that, as condition of probation, indigent defendant reimburse defense costs. 79 ALR3d 1025.

§ 99-37-7. Default in payment—contempt.

(1) When a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court, on motion of the district attorney, or upon its own motion, may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.

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(3) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

SOURCES: Laws, 1978, ch. 400, § 4 (1-3), eff from and after July 1, 1978.

Cross references—

As to appeals from contempt judgments, see § 11-51-11.

Research and Practice References—

17 Am Jur 2d, Contempt § 12 (corporations), §§ 17 et seq. (violation of court orders), §§ 77 et seq. (procedure), § 112 (effect of prohibition on imprisonment for debt).

17 CJS, Contempt §§ 13, 34.

7 Am Jur Pl & Pr Forms (Rev ed), Contempt, Form 51 (affidavit of contempt for disobedience of court order); Forms 101, 106 (show cause order for disobedience of court order); Forms 141, 143 (judgment or order of contempt); Form 178 (paragraph affording party chance to purge self of contempt before application for order directing punishment); Form 202 (counter-affidavit alleging inability to comply with judgment or order); Form 221 (certiorari to review judgment of contempt).

1978 Mississippi Supreme Court Review: Torts. 50 Miss LJ 137, March 1979.

ALR Annotations—

Right to punish for contempt for failure to obey court order or decree either beyond power or jurisdiction of court or merely erroneous. 12 ALR2d 1059.

Limitations statute applicable to criminal contempt proceedings. 33 ALR2d 1131.

Right of state in criminal contempt case to obtain data from defendant by interrogatories or pretrial discovery as permitted in civil actions. 72 ALR2d 431.

Appealability of acquittal from or dismissal of charge of contempt of court. 24 ALR3d 650.

Appealability of contempt adjudication or conviction. 33 ALR3d 448.

Contempt adjudication or conviction as subject to review other than by appeal or writ of error. 33 ALR3d 589.

Right to counsel in contempt proceedings. 52 ALR3d 1002.

§ 99-37-9. Term of imprisonment for contempt.

The term of imprisonment for contempt for failure to make restitution shall be set forth in the commitment order, and shall not exceed one (1) day for each twenty-five dollars (\$25.00) of the restitution, or thirty (30) days if the order of the restitution was imposed upon conviction of a violation or misdemeanor, or one (1) year in any other case, whichever is the shorter period. A person committed for failure to make restitution shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

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Research and Practice References—

17 Am Jur 2d, Contempt § 111.
17 CJS, Contempt §§ 98 to 103.
7 Am Jur Pl & Pr Forms (Rev ed), Contempt, Form 171 (order of imprisonment until contempt purged); Form 191 (commitment order); Form 211 (undertaking to secure release of persons arrested in contempt proceeding); Forms 231, 232 (affidavit in support of motion for release); Forms 234, 235 (order discharging defendant from custody).
8 Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure Forms 301, 304 (notice and motion to set aside excessive fine or term of imprisonment).
1979 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss LJ 763, December 1979.

§ 99-37-11. Relief from payment.

If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part.

SOURCES: Laws, 1978, ch. 400, § 4 (5), eff from and after July 1, 1978.

Cross references—

As to suspension of sentence, see §§ 99-19-25 et seq.

Research and Practice References—

21 Am Jur 2d, Criminal Law § 571 (reducing punishment).
17 CJS, Contempt §§ 107 to 111 (remission of fine or discharge from custody).
8 Am Jur Pl & Pr Forms (Rev ed), Criminal Procedure, Forms 301, 304 (notice and motion to set aside excessive fine or term of imprisonment).
1978 Mississippi Supreme Court Review: Torts. 50 Miss LJ 137, March 1979.

§ 99-37-13. Enforcement of judgment.

A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.

SOURCES: Laws, 1978, ch. 400, § 4 (6), eff from and after July 1, 1978.

Cross references—

As to property exempt from execution to satisfy judgment or order of contempt, see § 85-3-1.

Research and Practice References—

29 Am Jur 2d, Evidence § 334 (admissibility of criminal conviction).
46 Am Jur 2d, Judgments §§ 897 et seq.
1978 Mississippi Supreme Court Review: Torts. 50 Miss LJ 137, March 1979.

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§ 25-7-47. Witness fees.

Witnesses in the county, circuit, and chancery courts shall receive one dollar and fifty cents per day and five cents for each mile going to and returning from the courthouse to their homes by the nearest route, and such tolls and ferriages as they may actually be obliged to pay; but mileage, toll, and ferriage shall be charged but once at each term of court, and a charge shall not be made for mileage except that traveled in this state. Witnesses before a justice of the peace shall be allowed one dollar per day and no more. Witnesses in all other cases shall receive the same compensation as they receive before the circuit court. It shall not be necessary to issue subpoenas for police officers as witnesses in city cases of cities having a population of more than ten thousand according to the federal census of 1930; and such officers, when used as witnesses in such cases, are not to be allowed witness fees.

§ 25-7-57. Witness in criminal cases.

Witnesses in criminal cases shall be allowed the same compensation as in civil cases, but the prosecutor shall not be allowed compensation as a witness, nor shall any person be allowed for his attendance as a witness in more than one criminal case on the same day. The compensation of witnesses on behalf of the state shall be allowed in open court, the order therefor entered upon the minutes, and a certificate of same shall be delivered to the party entitled thereto. Said certificate shall be negotiable and shall be paid by the county treasurer of the county in which the offense was committed upon presentation by the payee or the holder in due course. The clerk shall keep an account of all such certificates and shall tax the amount thereof in the bill of costs if the defendant shall be sentenced to pay the costs and, when collected, the same shall be paid into the county treasury. A witness shall not receive compensation for attendance before the grand jury.

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§ 97-9-55. Intimidating judge, juror, witness, attorney, etc., or obstructing justice.

If any person or persons by threats, force or abuse, attempt to intimidate or otherwise influence a judge, justice of the peace, juror, or one whose name has been drawn for jury service, witness, prosecuting or defense attorney or any other officer in the discharge of his duties, or by such force, abuse or reprisals or threats thereof after the performance of such duties, or to obstruct or impede the administration of justice in any court, he shall, upon conviction, be punished by imprisonment not less than one (1) month in the county jail nor more than two (2) years in the state penitentiary or by a fine not exceeding five hundred dollars (\$500.00), or both such fine and imprisonment.

* * *

CHAPTER 45 [New] Adult Protective Services

New Sections Added

- SEC.
- 43-45-1. Short title.
 - 43-45-3. Purpose.
 - 43-45-5. Definitions.
 - 43-45-7. Report to department of public welfare of adult believed needing protective services; immunity from civil and criminal liability.
 - 43-45-9. Evaluation following receipt of report.
 - 43-45-11. Protective services provided upon consent of adult; procedure where caretaker of adult refuses to allow protective services.
 - 43-45-13. Court order for protective services.
 - 43-45-15. Court order for emergency services.
 - 43-45-17. Review of court orders.
 - 43-45-19. Payment of costs of essential services.
 - 43-45-21. Abuse, neglect or exploitation of adult unlawful; report to district attorney required; penalties; remedy not exclusive.
 - 43-45-23. Duty of public officials and agencies to cooperate with department of public welfare and court.

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43-45-25. Civil immunity of department of public welfare personnel in implementing chapter.

43-45-27. Department to adopt standards and guidelines.

43-45-29. Power of department to petition court for appointment of conservator for adult; "adult" defined for purposes of section.

43-45-31. Chapter not to interfere with religious beliefs of adult subject to chapter.

§ 43-45-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Adult Protective Services Act of 1982."

SOURCES: Laws, 1982, ch. 498, § 1, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

§ 43-45-3. Purpose.

The purpose of this chapter is to provide protective services for abused, neglected or exploited adults who reside in personal care homes in the state.

SOURCES: Laws, 1982, ch. 498, § 2, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

§ 43-45-5. Definitions.

For purposes of this chapter, the following words shall have the meanings ascribed in this section, unless the context otherwise requires:

(a) "Abuse" shall mean the willful infliction of physical pain, injury or mental anguish on an adult, the unreasonable confinement of an adult, or the willful deprivation by a caretaker of services which are necessary to maintain the mental and physical health of an adult.

(b) "Adult" shall mean any person eighteen (18) years of age or over who is residing in a personal care home in the state and is in need of protective services as defined in paragraph (n) of this section.

(c) "Caretaker" shall mean an individual, corporation, partnership, or other organization operating a personal care home, which has assumed the responsibility for the care of an adult voluntarily by contract, or through appointment by the court as guardian of the adult.

(d) "Court" shall mean the chancery court of the county in which the adult resides or is located.

(e) "Department" shall mean the state department of public welfare.

(f) "Emergency" shall mean a situation where (i) an adult is in substantial danger of death or irreparable harm if protective

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services are not provided immediately, (ii) the adult is unable to consent to services, (iii) no responsible, able or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize the procedure provided in section 43-45-13.

(g) "Emergency services" shall mean those services necessary to maintain an adult's vital functions and without which there is reasonable belief that the adult would suffer irreparable harm or death. This may include taking physical custody of the adult.

(h) "Essential services" shall mean those social, medical, psychiatric or legal services necessary to safeguard an adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include but not be limited to the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment and protection from exploitation. The words "essential services" shall not include taking an adult into physical custody without his consent except as provided for in section 43-45-15 and as otherwise provided by the general laws of the state.

(i) "Exploitation" shall mean the illegal or improper use of an adult or his resources for another's profit or advantage.

(j) "Lacks the capacity to consent" shall mean that an adult, because of physical or mental incapacity, lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including, but not limited to, provisions for health care, food, clothing or shelter. This may be reasonably determined by the department or the department may seek a physician's or psychologist's assistance in making this determination.

(k) "Neglect" shall mean the failure of a caretaker to provide the services which are necessary to maintain the mental and physical health of an adult.

(l) "Personal care home" means any building or buildings, residence, private home, boarding home, home for persons eighteen (18) years of age or older, or other place, whether operated for profit or not, and whether licensed by the Mississippi Health Care Commission or unlicensed, which undertakes through its ownership or management to provide, for a period exceeding twenty-four (24) hours, housing, food service, and one or more personal services for four (4) or more adults, not related to the owner or operator by blood or marriage, who required such services. A personal care home offering personal services for fewer

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than four (4) adults shall be within the meaning of this definition if it formally or informally advertises to or solicits the public for residents or referrals and holds itself out to the public to be an establishment which regularly provides such services. "Personal care homes," as defined herein, shall not include nursing homes which are licensed under the provisions of section 43-11-1 et seq. A personal care home which is within the meaning of this definition at the time a report is made concerning an adult residing therein shall remain subject to the provisions of this chapter until the conclusion of all proceedings regarding such report, even if such personal care home fails to meet this definition subsequent to the time the report is made.

(m) "Personal services" includes, but is not limited to, such services as: individual assistance with eating, bathing, grooming, dressing, ambulation, and housekeeping; supervision of self-administered medication; arrangement for or provision of social and leisure services; arrangement for appropriate medical, dental, nursing, or mental health services; and other similar services which the department may define. "Personal services" shall not be construed to mean the provision of medical, nursing, dental, or mental health services by the staff of a facility.

(n) "Protective services" shall mean services provided by the state or other government or private organizations, agencies or individuals which are necessary to protect an adult from abuse, neglect or exploitation. They shall consist of evaluation of the need for services and mobilization of essential services on behalf of the adult.

SOURCES: Laws, 1982, ch. 498, § 3; 1983, ch. 472, § 1, eff from and after July 1, 1983.

Cross references—

As to state department of public welfare, generally, see §§ 43-1-1 et seq.

§ 43-45-7. Report to department of public welfare of adult believed needing protective services; immunity from civil and criminal liability.

(1) Any person having reasonable cause to believe that an adult is in need of protective services shall report such information to the state department of public welfare.

(2) The report may be made orally or in writing. The report shall include the name and address of the adult; the name and address of the adult's caretaker; the age of the adult; the nature and extent of the adult's injury or condition resulting from abuse, neglect or exploitation; and other pertinent information.

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(3) Anyone who makes a report pursuant to this chapter, who testifies or participates in any judicial proceeding arising from the report or who participates in a required evaluation shall be presumed to be acting in good faith and in so doing shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed.

SOURCES: Laws, 1982, ch. 498, § 4, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

Cross references—

As to liability from immunity in battered, abused or neglected child cases, see § 43-23-9.

As to immunity from liability of petitioner for emergency services, see § 43-45-15.

As to civil immunity of department of public welfare personnel in implementing chapter, see § 43-45-25.

As to immunity from liability under Protection from Domestic Abuse Law, see § 93-21-23.

§ 43-45-9. Evaluation following receipt of report.

(1) Whenever the department receives a report that an adult is in need of protective services, it shall initiate an evaluation within forty-eight (48) hours to determine whether the adult is in need of protective services and what services are needed. The evaluation shall include any necessary visits to the person, as determined by the department, and consultation with others having knowledge of the particular case. When a caretaker of an adult refuses to allow the department to conduct an investigation to determine if the adult is in need of protective services, the department may petition the court for an order enjoining the caretaker from interfering with the investigation.

(2) The staff and physicians of local health departments, mental health clinics and other public or private agencies shall cooperate fully with the department in the performance of its duties. These duties include immediate, accessible evaluations and in-home evaluations where the department deems this necessary.

(3) The department may contract with an agency or private physician for the purpose of providing immediate, accessible medical evaluations in the location that the department deems most appropriate.

SOURCES: Laws, 1982, ch. 498, § 5; 1983, ch. 472, § 2, eff from and after July 1, 1983.

Cross references—

As to evaluation under this section including determination of ability to pay for costs of essential services, see § 43-45-19.

As to duty of public officials and agencies to cooperate with department of public welfare and court, see § 43-45-23.

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§ 43-45-11. Protective services provided upon consent of adult; procedure where caretaker of adult refuses to allow protective services.

(1) If the department determines that an adult is in need of protective services, it shall immediately provide or arrange for the provision of protective services, provided that the adult consents.

(2) When a caretaker of an adult who consents to the receipt of protective services refuses to allow the provision of such services to the adult, the department may petition the court for an order enjoining the caretaker from interfering with the provision of protective services to the adult. If the petition alleges specific facts sufficient to show that the adult is in need of protective services and that the caretaker refuses to allow the provision of such services, the court may issue an order enjoining the caretaker from interfering in the provision of protective services to the adult.

(3) If an adult does not consent to the receipt of protective services or if he withdraws his consent, the services shall not be provided.

SOURCES: Laws, 1982, ch. 498, § 6, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

Cross references—

As to review of court orders issued under chapter, see § 43-45-17.

§ 43-45-13. Court order for protective services.

(1) If the department reasonably determines that an adult is being abused, neglected or exploited and lacks capacity to consent to protective services, then the department may petition the court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the adult is in need of protective services and lacks capacity to consent to them.

(2) The court shall set the case for hearing within fourteen (14) days after the filing of the petition. The adult must receive at least five (5) days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the court, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem. If the person is indigent, the cost of representation shall be borne by the department.

(3) If, at the hearing, the court finds by clear, cogent and convincing evidence that the adult is in need of protective services and lacks capacity to consent to protective services, the court may issue an order relative thereto. This order may include the designation of an individual, organization or agency to be responsible

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for the performing or obtaining of essential services on behalf of the adult or otherwise consenting to protective services in his behalf. The court may appoint a guardian for the adult if it deems necessary, but the court shall not appoint the department as guardian of the adult. No adult may be committed to a mental health facility under this chapter. However, nothing contained herein shall prohibit the filing of petitions under other applicable provisions of the general laws of this state.

SOURCES: Laws, 1982, ch. 498, § 7, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

Cross references—

As to "emergency" meaning in part a situation precluding time to utilize procedure provided in this section, see § 43-45-5.

As to petitioning under this section in cases where emergency services will be needed for more than 14 days, see § 43-45-15.

As to review of court orders issued under chapter, see § 43-45-17.

As to payment of costs of essential services, see § 43-45-19.

§ 43-45-15. Court order for emergency services.

(1) Upon petition by the department, the court may order the provision of emergency services to an adult after finding that there is reasonable cause to believe that:

(a) The adult lacks capacity to consent and that he is in need of protective services; and

(b) An emergency exists; and

(c) No other person authorized by law or order to give consent for the adult is available and willing to arrange for emergency services.

If there is reasonable cause to believe that the conditions listed above exist and no other custodian is available, then upon written petition or affidavit filed by the department, the court may issue, in writing, a temporary order not exceeding twenty-four (24) hours for the department to provide emergency services to an adult.

(2) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than fourteen (14) days, the department shall petition the court in accordance with section 43-45-13.

(3) The petition for emergency services shall set forth the name, address and authority of the petitioners; the name, age and residence of the adult; the nature of the emergency; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (1) of this

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section, and facts showing petitioner's attempts to obtain the adult's consent to the services.

(4) Notice of the filing of such petition and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, shall be given to the adult; and to his spouse, or if none, to his adult children or next of kin; and to his guardian, if any. Such notice shall be given at least twenty-four (24) hours prior to the hearing of the petition for emergency intervention. However, the court may issue an immediate emergency order ex parte upon finding as fact (a) that there is likelihood that the adult may suffer irreparable injury or death if such order be delayed; and (b) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such services. Such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or any time within twenty (20) days thereafter and show cause, if any shall exist, for the dissolution or modification of such order; otherwise same to remain in effect; and copies of such order, together with such other appropriate notices as the court may direct, shall be issued and served upon all of the interested parties designated in the first sentence of this subsection.

(5) Where it is necessary to enter a premises without the adult's consent after obtaining a court order in compliance with subsection (1) of this section, the representative of the petitioner shall do so.

(6) No petitioner shall be held liable in any action brought by the adult if the petitioner acted in good faith.

SOURCES: Laws, 1982, ch. 498, § 8; 1983, ch. 472, § 3, eff from and after July 1, 1983.

Cross references—

As to taking physical custody of adult under this section as exception to definition of "essential services," see § 43-45-5.

As to definition of "emergency", see § 43-45-5.

As to immunity from civil and criminal liability of person making report or participating in judicial proceeding or evaluation under chapter, see § 43-45-7.

As to review of court orders issued under chapter, see § 43-45-17.

As to civil immunity of department of public welfare personnel in implementing chapter, see § 43-45-25.

§ 43-45-17. Review of court orders.

Notwithstanding any finding by the court of lack of capacity of the adult to consent, the adult or the individual, organization or agency designated to be responsible for the adult, if any, shall

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have the right to bring a motion in the cause for review of any order issued pursuant to this chapter.

SOURCES: Laws, 1982, ch. 498, § 9, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

§ 43-45-19. Payment of costs of essential services.

At the time the department makes an evaluation of the case reported, in accordance with the provisions of section 43-45-9, it shall be determined, according to the regulations set by the department, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such essential services, they shall be provided at no cost to the recipient of the services. The chancery court may order the department of public welfare or any public agency to provide for the custody, care and maintenance of such adult. Provided, however, that the care, custody and maintenance of any adult shall be within statutory authorization and budgetary means of such institution, facility, agency or department.

SOURCES: Laws, 1982, ch. 498, § 10, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

Cross references—

As to court including responsibility for essential services in order for protective services, see § 43-45-13.

As to review of court orders issued under chapter, see § 43-45-17.

§ 43-45-21. Abuse, neglect or exploitation of adult unlawful; report to district attorney required; penalties; remedy not exclusive.

(1) It shall be unlawful for any caretaker or other person to abuse, neglect or exploit any adult. Upon finding evidence indicating that a caretaker or other person has abused, neglected or exploited an adult, the department shall promptly notify the district attorney in writing within seventy-two (72) hours.

(2) Any caretaker or other person who wilfully commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the abuse, neglect, or exploitation of any adult, or which act or omission results in the abuse and/or battering of any adult, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment.

(3) Any caretaker or other person who wilfully inflicts physical

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pain or injury upon an adult shall be guilty of felonious abuse and/or battery of an adult and, upon conviction thereof, may be punished by imprisonment in the state penitentiary for not more than twenty (20) years.

(4) Nothing contained in this section shall prevent proceeding against a caretaker or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor.

SOURCES: Laws, 1982, ch. 498, § 11 1983, ch. 472, § 4, eff from and after July 1, 1983.

§ 43-45-23. Duty of public officials and agencies to cooperate with department of public welfare and court.

It is hereby made the duty of every public official, agency or department to render all assistance and cooperation within his or its jurisdictional power, which is requested by the department or ordered by the court. The department and the court are authorized to seek the cooperation of all societies, organizations or agencies having for their object the protection or aid of adults.

SOURCES: Laws, 1982, ch. 498, § 12, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

Cross references—

As to cooperation with department in evaluation following receipt of report of adult needing protective services, see § 43-45-9.

As to review of court orders issued under chapter, see § 43-45-17.

§ 43-45-25. Civil immunity of department of public welfare personnel in implementing chapter.

Any officer, agent or employee of the department in the good faith exercise of his duties under this chapter shall not be liable for any civil damages as a result of his acts or omissions in rendering assistance or care to any adult.

SOURCES: Laws, 1982, ch. 498, § 13, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

Cross references—

As to immunity from civil and criminal liability of person making report or participating in judicial proceeding or evaluation under chapter, see § 43-45-7.

As to immunity from liability of petitioner for emergency services, see § 43-45-15.

§ 43-45-27. Department to adopt standards and guidelines.

The department shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of the provisions of this chapter no later than October 1, 1982.

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§ 43-45-29. Power of department to petition court for appointment of conservator for adult; "adult" defined for purposes of section.

In addition to the powers granted under the provisions of this chapter, the department is authorized to petition the court under the provisions of section 93-13-251 for appointment of a conservator for any adult. For the purposes of this section, the term "adult" shall mean any person eighteen (18) years of age or older, and shall not be limited by the definition of paragraph (b) of section 43-45-5.

SOURCES: Laws, 1982, ch. 498, § 15, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

Cross references—

As to review of court orders issued under chapter, see § 43-45-17.

§ 43-45-31. Chapter not to interfere with religious beliefs of adult subject to chapter.

Nothing in this chapter shall be construed to mean a person is neglected or in need of emergency or protective services for the sole reason he is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall anything in this chapter be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such person.

SOURCES: Laws, 1982, ch. 498, § 16, eff from and after July 1, 1982, and shall stand repealed July 1, 1985.

* * *

§ 93-21-1

DOMESTIC RELATIONS

CHAPTER 21 [New]

Protection From Domestic Abuse

SEC.	
93-21-1	Short title.
93-21-3	Definitions.
93-21-5	Jurisdiction.
93-21-7	Petition to seek relief.
93-21-9	Contents of petition.
93-21-11	Notice and hearing; temporary orders.
93-21-13	Ex parte proceedings before justice court or county court; temporary relief.

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- 93-21-15. Protective orders or consent agreements.
- 93-21-17. Grant of relief not to affect property titles or availability of other remedies; duration of orders.
- 93-21-19. Testimony by spouses not to be restricted.
- 93-21-21. Penalties for violation of protective orders or consent agreements.
- 93-21-23. Participants in reports or proceedings presumed acting in good faith; immunity from liability.
- 93-21-25. Reports of abuse; confidentiality of reports.
- 93-21-27. Immunity of law enforcement officers for arrests arising from incidents of domestic violence.
- 93-21-29. Proceedings to be in addition to other civil or criminal remedies.

DOMESTIC VIOLENCE SHELTERS

- 93-21-101. Definitions.
- 93-21-103. Domestic violence shelters.
- 93-21-105. Criteria to qualify for state funding.
- 93-21-107. Eligibility for funds; requirements.
- 93-21-109. Records withheld from public disclosure.
- 93-21-111. Annual report.
- 93-21-113. Reporting criminal acts or omissions to law enforcement personnel; filing charges against offender; plea bargaining.
- 93-21-115. Donations from municipalities to support local shelters.

§ 93-21-1. Short title.

This chapter shall be known and may be cited as the "Protection from Domestic Abuse Law."

SOURCES: Laws, 1981, ch 429, § 1, eff from and after July 1, 1981.

§ 93-21-3. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together:

(i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;

(ii) Placing, by physical menace or threat, another in fear of imminent serious bodily injury; or

(iii) Criminal sexual conduct committed against a minor within the meaning of section 97-5-23.

(b) "Adult" means any person eighteen (18) years of age or older, or any person under eighteen (18) years of age who has been emancipated by marriage.

(c) "Court" shall mean the chancery court, or the justice court or county court when the chancery court is unavailable.

(d) "Family or household member" means spouses, former spouses, persons living as spouses, parents and children, or other persons related by consanguinity or affinity.

SOURCES: Laws, 1981, ch 429, § 2, eff from and after July 1, 1981.

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ALR and L Ed Annotations—

Right of one spouse to maintain action against other for personal injury. 43 ALR2d 632.

Criminal responsibility of husband for rape, or assault to commit rape, on wife. 84 ALR2d 1017.

Duty to retreat where assailant and assailed share the same living quarters. 26 ALR3d 1296.

Validity and construction of penal statute prohibiting child abuse. 1 ALR4th 38.

§ 93-21-5. Jurisdiction

The court shall have jurisdiction over all proceedings under this chapter. The petitioner's right to relief under this chapter shall not be affected by his leaving the residence or household to avoid further abuse.

SOURCES: Laws, 1981, ch. 429, § 3, eff from and after July 1, 1981.

Research and Practice References—

6 Am Jur 2d, Assault and Battery §§ 43, 44, 47.

41 Am Jur 2d, Husband and Wife §§ 515 et seq., 522 et seq.

42 Am Jur 2d, Infants §§ 14-17.

59 Am Jur 2d, Parent and Child §§ 148 et seq.

67A CJS, Parent and Child §§ 165 et seq.

ALR and L Ed Annotations—

Right of one spouse to maintain action against other for personal injury. 43 ALR2d 632.

Criminal responsibility of husband for rape, or assault to commit rape, on wife. 84 ALR2d 1017.

Duty to retreat where assailant and assailed share the same living quarters. 26 ALR3d 1296.

Validity and construction of penal statute prohibiting child abuse. 1 ALR4th 38.

§ 93-21-7. Petition to seek relief.

A person may seek relief under this chapter for himself by filing a petition with the court alleging abuse by the defendant. Any parent, adult household member, or next friend of the abused person may seek relief under this chapter on behalf of any minor children or any person alleged to be incompetent by filing a petition with the court alleging abuse by the defendant.

SOURCES: Laws, 1981, ch. 429, § 4, eff from and after July 1, 1981.

Research and Practice References—

6 Am Jur 2d, Assault and Battery §§ 43, 44, 47.

41 Am Jur 2d, Husband and Wife §§ 515 et seq., 522 et seq.

42 Am Jur 2d, Infants §§ 14-17.

59 Am Jur 2d, Parent and Child §§ 148 et seq.

67A CJS, Parent and Child §§ 165 et seq.

ALR and J. Ed Annotations—

Right of one spouse to maintain action against other for personal injury. 43 ALR2d 632.

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§ 93-21-9. Contents of petition.

(1) A petition filed under the provisions of this chapter shall state:

- The name, address and county of residence of each petitioner and of each individual alleged to have committed abuse;
- The facts and circumstances concerning the alleged abuse;
- The relationships between the petitioners and the individuals alleged to have committed abuse; and
- A request for one or more protective orders.

(2) If a petition requests a protective order for a spouse and alleges that the other spouse has committed abuse, the petition shall state that no suit for divorce of the spouses is pending.

(3) If a suit for divorce of the spouses is pending, no petition or portion of the petition involving the relationship between the spouses or their respective rights, duties or powers may be considered, and that portion of the petition relating to those parties shall be dismissed. Any temporary or permanent decree issued in a divorce proceeding subsequent to an order issued pursuant to this chapter may, in the discretion of the chancellor hearing the divorce proceeding, supersede in whole or in part the order issued pursuant to this chapter.

(4) If a petitioner is a former spouse of an individual alleged to have committed abuse:

- A copy of the decree of divorce shall be attached to the petition; or
- The petition shall state the decree is currently unavailable to the petitioner and that a copy of the decree will be filed with the court before the time for the hearing on the petition.

(5) If a petition requests a protective order for a child who is subject to the continuing jurisdiction of a youth court, family court or a chancery court, or alleges that a child who is subject to the continuing jurisdiction of a youth court, family court or chancery court has committed abuse:

(a) A copy of the court orders affecting the custody or guardianship, possession and support of or access to the child shall be filed with the petition; or

(b) The petition shall state that the orders affecting the child are currently unavailable to the petitioner and that a copy of the orders will be filed with the court before the hearing on the petition.

(6) If the petition requests the issuance of a temporary ex parte order the petition shall:

- Contain a general description of the facts and circumstances concerning the abuse and the need for immediate protective orders; and

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(b) Be signed by each petitioner under oath that the facts and circumstances contained in the petition are true to the best knowledge and belief of each petitioner.

SOURCES: Laws, 1981, ch. 429, § 5, eff from and after July 1, 1981.

Research and Practice References—

6 Am Jur 2d, Assault and Battery §§ 43, 44, 47.
41 Am Jur 2d, Husband and Wife §§ 515 et seq., 522 et seq.
42 Am Jur 2d, Infants §§ 14-17.
59 Am Jur 2d, Parent and Child §§ 148 et seq.
67A CJS, Parent and Child §§ 165 et seq.

ALR and L Ed Annotations—

Right of one spouse to maintain action against other for personal injury. 43 ALR2d 632.
Criminal responsibility of husband for rape, or assault to commit rape, on wife. 84 ALR2d 1017.
Duty to retreat where assailant and assailed share the same living quarters. 26 ALR3d 1296.
Validity and construction of penal statute prohibiting child abuse. 1 ALR4th 38.

§ 93-21-11. Notice and hearing; temporary orders.

(1) Within ten (10) days of filing of a petition under the provisions of this chapter, the court shall hold a hearing, at which time the petitioner must prove the allegation of abuse by a preponderance of the evidence. The defendant shall be given notice by service of process as otherwise provided by law.

(2) Upon good cause shown in an ex parte proceeding, the court may enter such temporary order as it deems necessary to protect from abuse the petitioner, any minor children, or any person alleged to be incompetent. Immediate and present danger of abuse to the petitioner, any minor children, or any person alleged to be incompetent, shall constitute good cause for purposes of this subsection. A temporary order shall last no longer than ten (10) days.

(3) If a hearing under subsection (1) of this section is continued, the court may make or extend such temporary orders under subsection (2) of this section as it deems necessary. A continuance under this subsection shall last no longer than twenty (20) days.

§ 93-21-13. Ex parte proceedings before justice court or county court; temporary relief.

(1) When the chancery court is unavailable, a petition may be filed before the justice court judge or county court judge, in an ex parte proceeding upon good cause shown, if the justice court judge or county court judge deems it necessary to protect from abuse the petitioner, any minor children, or any person alleged to be incompetent. Immediate and present danger of abuse to the petitioner, any minor children, or any person alleged to be incompetent, shall constitute good cause for the purposes of this section.

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(2) The justice court and the county court shall be empowered to grant any protective order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent, which relief may include:

(a) Directing the defendant to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(b) Granting possession to the petitioner of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the petitioner;

(c) When the defendant has a duty to support the petitioner, any minor children, or any person alleged to be incompetent living in the residence or household and the defendant is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the petitioner, or by consent agreement allowing the defendant to provide suitable, alternate housing; and

(d) Prohibiting the transferring, encumbering or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business.

(3) Any order issued under subsection (2) of this section is temporary and shall not exceed ten (10) days and shall expire as of the date of the hearing in chancery court, at which time, the petitioner may seek a temporary order from the chancery court.

(4) On the request of a petitioner the order issued under this section may be extended for an additional twenty (20) days allowing the petitioner sufficient time to seek relief in chancery court.

(5) The court may amend its order or agreement at any time upon subsequent petition by either party.

SOURCES: Laws, 1981, ch. 429, § 7, eff from and after July 1, 1981.

Research and Practice References—

6 Am Jur 2d, Assault and Battery §§ 43, 44, 47.
41 Am Jur 2d, Husband and Wife §§ 515 et seq., 522 et seq.
42 Am Jur 2d, Infants §§ 14-17.
59 Am Jur 2d, Parent and Child §§ 148 et seq.
67A CJS, Parent and Child §§ 165 et seq.

§ 93-21-15. Protective orders or consent agreements.

(1) The chancery court shall be empowered to grant any protective order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent, which relief may include:

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(a) Directing the defendant to refrain from abusing the petitioner, any minor children, or any person alleged to be incompetent;

(b) Granting possession to the petitioner of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the petitioner;

(c) When the defendant has a duty to support the petitioner, any minor children, or any person alleged to be incompetent living in the residence or household and the defendant is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the petitioner, or by consent agreement allowing the defendant to provide suitable, alternate housing;

(d) Awarding temporary custody of and/or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent;

(e) If the defendant is legally obligated to support the petitioner, any minor children, or any person alleged to be incompetent, ordering the defendant to pay temporary support for the petitioner, any minor children, or any person alleged to be incompetent;

(f) Ordering the defendant to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse, including, but not limited to, medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, a reasonable attorney's fee, and/or ordering counseling or professional medical treatment for the defendant and/or the abused person; and

(g) Prohibiting the transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business.

SOURCES: Laws, 1981, ch. 429, § 8, eff from and after July 1, 1981.

§ 93-21-17. Grant of relief not to affect property titles or availability of other remedies; duration of orders.

(1) The granting of any relief authorized under this chapter shall not preclude any other relief provided by law.

(2) Any protective order or approved consent agreement shall be for a fixed period of time not to exceed one (1) year. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

(3) No order or agreement under this chapter shall in any manner affect title to any real property.

SOURCES: Laws, 1981, ch. 429, § 9, eff from and after July 1, 1981.

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§ 93-21-19. Testimony by spouses not to be restricted.

There shall be no restrictions concerning a spouse testifying against his spouse in any hearing under the provisions of this chapter.

§ 93-21-21. Penalties for violation of protective orders or consent agreements.

Upon violation of a protective order or a court approved consent agreement known to the defendant, the court may hold the defendant in contempt of court and punish the defendant by imprisonment in the county jail for not more than six (6) months or a fine of not more than one thousand dollars (\$1,000.00), or both.

SOURCES: Laws, 1981, ch. 429, § 11, eff from and after July 1, 1981.

Research and Practice References—

6 Am Jur 2d, Assault and Battery §§ 43, 44, 47.

41 Am Jur 2d, Husband and Wife §§ 515 et seq., 522 et seq.

42 Am Jur 2d, Infants §§ 14-17.

59 Am Jur 2d, Parent and Child §§ 148 et seq.

67A CJS, Parent and Child §§ 165 et seq.

§ 93-21-23. Participants in reports or proceedings presumed acting in good faith; immunity from liability.

Any licensed doctor of medicine, licensed doctor of dentistry, intern, resident or registered nurse, psychologist, social worker, preacher, teacher, attorney, law enforcement officer, or any other person or institution participating in the making of a report pursuant to this chapter or participating in judicial proceedings resulting therefrom shall be presumed to be acting in good faith, and if found to have acted in good faith shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. The reporting of an abused person shall not constitute a breach of confidentiality.

SOURCES: Laws, 1981, ch. 429, § 12, eff from and after July 1, 1981.

§ 93-21-25. Reports of abuse; confidentiality of reports.

A written report of any known or suspected abuse may be made to the state department of public welfare as soon as possible by any person having knowledge of such abuse. Reports of abuse made under the provisions of this chapter and the identity of those persons making the reports shall be confidential.

SOURCES: Laws, 1981, ch. 429, § 13, eff from and after July 1, 1981.

Research and Practice References—

6 Am Jur Proof of Facts 2d, Failure to Report Suspected Case of Child Abuse, §§ 10 et seq. (proof of physicians' negligent failure to diagnose and report suspected case of child abuse).

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§ 93-21-27. Immunity of law enforcement officers for arrests arising from incidents of domestic violence.

A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged domestic violence incident brought by any authorized party.

SOURCES: Laws, 1981, ch. 429, § 14, eff from and after July 1, 1981.

§ 93-21-29. Proceedings to be in addition to other civil or criminal remedies.

Any proceeding under this chapter shall be in addition to other available civil or criminal remedies.

SOURCES: Laws, 1981, ch. 429, § 15, eff from and after July 1, 1981.

§ 93-21-101. Definitions.

As used in sections 93-21-101 through 93-21-113, unless the context otherwise requires:

(a) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together:

(i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;

(ii) Placing, by physical menace or threat, another in fear of imminent serious bodily injury; or

(iii) Criminal sexual conduct committed against a minor within the meaning of section 97-5-23.

(b) "Domestic violence shelter" means a place established to provide temporary food and shelter, counseling, and related services to victims of domestic violence.

§ 93-21-103. Domestic violence shelters.

There is hereby established a program for victims of domestic violence through domestic violence shelters.

SOURCES: Laws, 1983, ch. 502, § 2, eff from and after passage (approved April 12, 1983).

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§ 93-21-105. Criteria to qualify for state funding.

The criteria which must be met by domestic violence shelters to qualify for state funding shall include all of the following:

(a) Geographic distribution throughout the entire state of Mississippi requiring that there be at least one (1) shelter in each of the nine (9) districts of the Mississippi Highway Safety Patrol as such districts existed on July 1, 1982, prior to funding more than one (1) shelter in a highway safety patrol district. More than one (1) shelter may be funded in a highway safety patrol district upon a showing of documented need.

(b) The shelter's ability to provide services.

(c) The shelter's ability to secure community support, including written endorsements of local officials and organizations.

(d) The shelter's administrative design and efficiency. However, domestic violence shelters in existence on the effective date of sections 93-21-101 through 93-21-113 which have met the requirements of section 93-21-107 shall be given priority in funding.

SOURCES: Laws, 1983, ch. 502, § 3, eff from and after passage (approved April 12, 1983).

§ 93-21-107. Eligibility for funds; requirements.

(1) To qualify for funds under the provisions of sections 93-21-101 through 93-21-113, a domestic violence shelter shall meet all the following requirements:

(a) Be incorporated in the state or recognized by the secretary of state as a private or public nonprofit corporation. Such corporation shall have a board of directors and/or an advisory committee who represents the racial, ethnic and social economic diversity of the area to be served, including, if possible, at least one (1) person who is or has been a victim of domestic violence.

(b) Have designed and developed a program to provide the following basic services to victims of domestic violence and their children:

(i) Shelter on a twenty-four (24) hour a day, seven (7) days a week basis.

(ii) A twenty-four (24) hour, seven (7) days a week switchboard for crisis calls.

(iii) Temporary housing and food facilities.

(iv) Group support and peer counseling.

(v) Referrals to existing services in the community and follow-up on the outcome of the referrals.

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(vi) A method of referral for medical care, legal assistance and group support and counseling of victims of domestic violence.

(vii) Information regarding reeducation, marriage and family counseling, job counseling, and training programs, housing referrals, and other available social services.

(viii) A referral program of counseling for the victim and the offender.

(2) Domestic violence shelters shall establish procedures for admission of victims of domestic violence who may seek admission to these shelters on a voluntary basis.

(3) A domestic violence shelter shall not qualify for funds if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin or ancestry.

(4) Not less than twenty-five percent (25%) of the operational cost of a domestic violence shelter shall be derived from local revenue sources of the local community served by the program. The local contribution may not include in-kind contributions.

(5) A domestic violence shelter receiving state funding under the provisions of sections 93-21-101 through 93-21-113 shall not be prohibited from accepting gifts, trusts, bequests, grants, endowments, federal funds, other special source funds or transfers of property of any kind for the support of that shelter program.

(6) No domestic violence shelter may receive more than fifty thousand dollars (\$50,000.00) annually from state funding under the provisions of sections 93-21-101 through 93-21-113.

(7) A domestic violence shelter shall require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter.

(8) A domestic violence shelter shall provide educational programs relating to battered spouses and domestic violence designed for both the community at large and/or specialized groups such as hospital personnel and law enforcement officials.

SOURCES: Laws, 1983, ch. 502, § 4, eff from and after passage (approved April 12, 1983).

§ 93-21-109. Records withheld from public disclosure.

Records maintained by domestic violence shelters, except the official minutes of the board of directors of the shelter, and financial reports filed as required by statute with the board of supervisors or municipal authorities or any other agency of government, shall be withheld from public disclosure under the provisions of the Mississippi Public Records Act of 1983.

SOURCES: Laws, 1983, ch. 502, § 5, eff from and after passage (approved April 12, 1983).

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§ 93-21-111. Annual report.

A domestic violence shelter that receives funds pursuant to the provisions of sections 93-21-101 through 93-21-113 shall file at a minimum an annual report with the commission of budget and accounting and other data reports as requested. A copy of the annual report shall also be furnished to the chairmen of the pensions, social welfare and public health committee of the Mississippi House of Representatives and the public health and welfare committee of the Mississippi Senate. The annual report shall include statistics on the number of persons served by the shelter, the relationship of the victim of domestic violence to the offender, the number of referrals made for medical, psychological, financial, educational, vocational, child care, or legal services, and shall include the results of an independent audit. No information contained in the report shall identify any person served by the shelter, or enable any person to determine the identity of any such person.

SOURCES: Laws, 1983, ch. 502, § 6, eff from and after passage (approved April 12, 1983).

§ 93-21-113. Reporting criminal acts or omissions to law enforcement personnel; filing charges against offender; plea bargaining.

Domestic violence shelters through their employees and officials shall, on every occasion other than the initial request for assistance, report to the district attorney, the county attorney, or the appropriate law enforcement official or other state agencies any occurrence or instance coming to their attention which would involve the commission of a crime or the failure to perform or render a service or assistance to a victim of domestic violence when required by law to do so.

Every county attorney, district attorney or other appropriate law enforcement official who, having had reported to him a case of domestic violence, if the facts submitted be sufficient, shall immediately file charges against the offender on the behalf of the victim. Such prosecutor may in plea bargaining with the offender enter into an agreement whereby the offender shall receive counseling in lieu of further prosecution, and if the offender shall successfully attend counseling as agreed upon for the period of time agreed upon, the county attorney or district attorney, as the case may be, shall pass such case to the file.

No county attorney or district attorney shall grant such right in plea bargaining to the same offender more than once.

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§ 93-21-115. Donations from municipalities to support local shelters.

The governing authorities of any municipality in the state are hereby authorized and empowered, in their discretion, to donate annually out of any money in the municipal treasury, a sum not exceeding ten thousand dollars (\$10,000.00) to support any domestic violence shelter operating within or serving its area.

SOURCES: Laws, 1983, ch. 502, § 9, eff from and after October 1, 1983.

Category		Citation
1.	Victim Compensation Program	595.010 et seq.
1.1	Responsible Agency	595.015(1)
1.2	Eligible Claimants	595.010(10), 595.020
1.3	Losses Covered	595.030(3),(4)
1.4	Minimum and Maximum Award	595.030(1)(4)
1.5	Required to Show Financial Need	
1.6	Required to Report Crime - Time Limit	595.030(2), 595.030(4)
1.7	Filing of Claim - Time Limit	595.025(2)
1.8	Emergency Award	
1.9	Funding	217.255(4), 595.045
2.	Restitution	
2.1	Sentencing Option	559.021(2)(1)
2.2	Mandatory Condition of Probation	
2.3	Mandatory Condition of Parole	
2.4	Mandatory Sentence	
2.5	Administration/Enforcement	
3.	Escrow and Forfeiture of Offender Profits	
4.	Witness Fees	491.280
5.	Victim's Bill of Rights	
6.	Protection from Intimidation	
6.1	Crime Defined	575.270
6.2	Protective Orders	491.600, 491.610
7.	Victim Notification	
7.1	of Compensation Program	
7.2	of Witness Fees	
7.3	of Final Disposition	
7.4	of Plea Agreement	
7.5	of Cancelled Proceeding	
7.6	of Right to Participate in Sentencing Hearing	
7.7	of Parole Hearing	
7.8	of Release of Offender	
7.9	of Escape of Offender	
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	
8.2	Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	595.050
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	191.225
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	455.010, 455.035
14.2 Domestic Violence Shelters	455.200 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	455.230 (annual reports by domestic violence shelters)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	455.230 (domestic violence reports)
15.4 Sexual Assault Counselor Privilege	

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Missouri Annotated Statutes (Vernon's)

CHAPTER 595. VICTIMS OF CRIMES, COMPENSATION AND SERVICES

Sec.		Sec.	
595.010.	Definitions.		
595.015.	Compensation claims, division of workers' compensation to administer—application filed with division.	595.040.	Subrogation, state's right, when—attorney general to bring action.
595.020.	Eligibility for compensation.	595.045.	Funding—judgments in certain criminal cases, amount—failure to pay, effect—court cost deducted—insufficient funds to pay claims, procedure—interest earned, disposition.
595.025.	Claims, filing and hearing, procedure, who may file—time limitation—attorney's fees—examination report by physician, when.	595.050.	Contracts for services to victims, requirements, limitations.
595.030.	Compensation, out-of-pocket loss requirement, definition—award, how computed—deductible—award distribution among joint claimants, when—maximum award.	595.055.	Services for victims, requirements—exceptions.
595.035.	Award standards to be established—amount of award, factors to be considered—reduction for other compensation received by victim.	595.060.	Rules and regulations—promulgation—suspension—reinstatement.
		595.065.	Orders for payment, when effective.
		595.070.	Effective dates of various sections.

Law Review Commentaries

Forgotten victims: Missouri solution. 50 UMKC L.Rev. 533 (1982).

Library References

Criminal Law § 1220.
C.J.S. Criminal Law § 2007.

595.010. Definitions

As used in sections 595.010 to 595.070, unless the context requires otherwise, the following terms shall mean:

(1) "Crime", an act committed in this state which, if committed by a mentally competent, criminally responsible adult who had no legal exemption or defense, would constitute a crime; provided that, such act involves the application of force or violence or the threat of force or violence by the offender upon the victim; and provided, further, that no act involving the operation of a motor vehicle which results in injury to another shall constitute a crime for the purpose of sections 595.010 to 595.070, unless such injury was intentionally inflicted through the use of a motor vehicle;

(2) "Crisis intervention counseling", helping to reduce psychological trauma where victimization occurs;

(3) "Department", the department of public safety;

(4) "Dependent", mother, father, spouse, spouse's mother, spouse's father, child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly or partially dependent for support upon, and living with, the victim at the time of his injury or death due to a crime alleged in a claim pursuant to sections 595.010 to 595.070;

(5) "Direct service", providing physical services to a victim of crime including, but not limited to, transportation, funeral arrangements, child care, emergency food, clothing, shelter, notification and information;

(6) "Director", the director of public safety of this state or a person designated by him for the purposes of sections 595.010 to 595.070;

(7) "Division", the division of workers' compensation of the state of Missouri;

(8) "Emergency service", those services provided within thirty days to alleviate the immediate effects of the criminal act or offense, and may include cash grants of not more than one hundred dollars;

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(9) "Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent, or spouse's parents of the offender;

(10) "Injured victim" shall mean a resident of this state:

(a) Killed or receiving a personal injury in this state as a result of another person's commission of or attempt to commit any crime;

(b) Killed or receiving a personal injury in this state while in a good faith attempt to assist a person against whom a crime is being perpetrated or attempted;

(c) Killed or receiving a personal injury in this state while assisting a law enforcement officer in the apprehension of a person who the officer has reason to believe has perpetrated or attempted a crime;

(11) "Offender", a person who commits a crime;

(12) "Personal injury", actual bodily harm;

(13) "Private agency", a not for profit corporation, in good standing in this state, which provides services to victims of crime and their dependents;

(14) "Public agency", a part of any local or state government organization which provides services to victims of crime;

(15) "Victim", a resident of this state who suffers personal injury or death as a direct result of a crime, as defined in subdivision (1) of this section;

(16) "Victim advocacy", assisting the victim of crime and his dependents to acquire services from existing community resources.

(L. 1981, p. 646, § 1, et. Jan. 1, 1983. Amended by L. 1982, p. 664, § A.)

1982 Amendment: In subd. (10) defining "injured victim" substituted "a resident of this state" for "any person"; in subd. (15) defining "victim" substituted "resident of this state" for "person".

Title of Act:

An act relating to the compensation of and services for certain crime victims, with an effective date. L. 1981, p. 646.

595.015. Compensation claims, division of workers' compensation to administer—application filed with division

1. The division of workers' compensation shall, pursuant to the provisions of sections 595.010 to 595.070, have jurisdiction to determine and award compensation to victims of crimes.

2. Such claims shall be made by filing an application for compensation with the division of workers' compensation. Claimants shall have cooperated with law enforcement officials in order to be eligible.

595.020. Eligibility for compensation

1. Except as hereinafter provided, the following persons shall be eligible for compensation pursuant to sections 595.010 to 595.070:

(1) A victim of a crime; and

(2) In the case of the death of the victim as a direct result of the crime, a dependent of the victim.

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2. An offender or an accomplice of an offender, a member of the family of the offender, a person living with the offender or a person maintaining sexual relations with the offender shall in no case be eligible to receive compensation with respect to a crime committed by the offender.

(L. 1981, p. 647, § 3, eff. Jan. 1, 1983.)

Law Review Commentaries

Forgotten victims: Missouri solution. 50
UMKC LRev. 533 (1982).

595.025. Claims, filing and hearing, procedure, who may file—time limitation—attorney's fees—examination report by physician, when

1. A claim for compensation may be filed by a person eligible for compensation or, if he is incompetent or a minor, by his spouse or guardian.

2. A claim shall be filed not later than one year after the occurrence of the crime upon which it is based, or not later than ninety days after the death of the victim, whichever is earlier; provided, however, that upon good cause, the division of workers' compensation may either before or after the expiration of such filing period extend the time for filing such claim.

3. Each claim shall be filed in person or by mail. The division of workers' compensation shall investigate such claim, prior to the opening of formal proceedings. The claimant shall be notified of the date and time of any hearing on such claim.

4. The claimant may present evidence and testimony on his own behalf or may retain counsel. The division of workers' compensation may, as part of any award entered under sections 595.010 to 595.070, determine and allow reasonable attorney's fees, which shall not exceed fifteen percent of the amount awarded as compensation under sections 595.010 to 595.070, which fee shall be paid out of, but not in addition to, the amount of compensation, to the attorney representing the claimant. No attorney for the claimant shall ask for, contract for or receive any larger sum than the amount so allowed.

5. The person filing a claim shall, prior to any hearing thereon, submit reports, if available, from all hospitals, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought. If, in the opinion of the division of workers' compensation, an examination of the injured victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the division of workers' compensation may appoint a duly qualified, impartial physician to make such examination and report.

595.030. Compensation, out-of-pocket loss requirement, definition—award, how computed—deductible—award distribution among joint claimants, when—maximum award

1. No compensation shall be paid unless the claimant has incurred an out-of-pocket loss of at least two hundred dollars or has lost two continuous weeks of earnings or support. "Out-of-pocket loss" shall mean unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury. Two hundred dollars shall be deducted from any award granted under sections 595.010 to 595.070.

2. No compensation shall be paid unless the division of workers' compensation finds that a crime was committed, that such crime directly resulted in personal physical injury to, or the death of, the victim, and that police records show that such crime was promptly reported to the proper authorities. In no case may compensation be paid if the police records show that such report was made more than forty-eight hours after the occurrence of such crime, unless the division of workers' compensation finds that the report to the police was delayed for good cause.

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3. Any compensation paid under sections 595.010 to 595.070 for death or personal injury shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support resulting from such injury, or death.

4. Any compensation for loss of earnings or support shall be in an amount equal to the actual loss sustained; provided, however, that no award under sections 595.010 to 595.070 shall exceed ten thousand dollars. If two or more persons are entitled to compensation as a result of a death of a person which is the direct result of a crime, the compensation shall be apportioned by the division of workers' compensation among the claimants in proportion to their loss.

(L. 1981, p. 647, § 5, eff. Jan. 1, 1983.)

Law Review Commentaries

Forgotten victims: Missouri solution. 50
UMKC L.Rev. 533 (1982).

595.035. Award standards to be established—amount of award, factors to be considered—reduction for other compensation received by victim.

1. For the purpose of determining the amount of compensation payable pursuant to sections 595.010 to 595.070, the division of workers' compensation shall, insofar as practicable, formulate standards for the uniform application of sections 595.010 to 595.070, taking into consideration the provisions of sections 595.010 to 595.070, the rates and amounts of compensation payable for injuries and death under other laws of this state and of the United States, excluding pain and suffering, and the availability of funds appropriated for the purpose of sections 595.010 to 595.070. All decisions of the division of workers' compensation on claims heard under sections 595.010 to 595.070 shall be in writing, setting forth the name of the claimant, the amount of compensation and the reasons for the decision. The division of workers' compensation shall immediately notify the claimant in writing of the decision and shall forward to the state treasurer a certified copy of the decision and a warrant for the amount of the claim. The state treasurer, upon certification by the commissioner of administration, shall, if there are sufficient funds in the crime victims' compensation fund, pay the claimant the amount determined by the division.

2. Any compensation paid pursuant to sections 595.010 to 595.070 shall be reduced by the amount of any payments received or to be received as a result of the injury or death:

- (1) From or on behalf of the offender;
- (2) Under insurance programs; or
- (3) From public funds.

3. In determining the amount of compensation payable, the division of workers' compensation shall determine whether, because of his conduct, the victim contributed to the infliction of his injury or death, and shall reduce the amount of the compensation or deny the claim altogether, in accordance with such determination; provided, however, that the division of workers' compensation may disregard the responsibility of the victim for his own injury where such responsibility was attributable to efforts by the victim to aid a victim, or 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.

(L. 1981, p. 648, § 6, eff. Jan. 1, 1983. Amended by L. 1982, p. 665, § A; L. 1983, p. —, H.B. No. 713 Revision, § 1.)

1982 Amendment. Reenacted the section without revision.

1983 Amendment. In the first sentence of subsec. 1 deleted "and property loss and damage" following "injuries and death".

Law Review Commentaries

Forgotten victims: Missouri solution. 50
UMKC L.Rev. 533 (1982).

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595.040. Subrogation, state's right, when—attorney general to bring action.

Acceptance of any compensation under sections 595.010 to 595.070 shall subrogate this state, to the extent of such compensation paid, to any right or right of action accruing to the claimant or to the victim to recover payments on account of losses resulting from the crime with respect to which the compensation has been paid. The attorney general may enforce the subrogation, and he shall bring suit to recover from any person to whom compensation is paid, to the extent of the compensation actually paid under sections 595.010 to 595.070, any amount received by the claimant from any source exceeding the actual loss to the victim.

(L. 1981, p. 648, § 7, eff. Jan. 1, 1983.)

Law Review Commentaries

Forgotten victims: Missouri solution. 50
UMKC L.Rev. 533 (1982).

595.045. Funding—judgments in certain criminal cases, amount—failure to pay, effect—court cost deducted—insufficient funds to pay claims, procedure—interest earned, disposition.

1. There is established in the state treasury the "Crime Victims' Compensation Fund". In all cases in which defendants are given a sentence of imprisonment or a suspended imposition of sentence or are placed under the supervision of the state board of probation and parole or any county parole officer after an adjudication of guilty or after imposition of sentence, whether upon a plea of guilty or after trial, the court shall enter judgment of twenty-six dollars against the defendant in favor of the state of Missouri. Willful failure of the defendant to satisfy such judgment shall be cause for revocation of probation, parole, or conditional release. The clerk of the court processing such funds shall pay over to the state treasury the sum of twenty-five dollars to the crime victims' compensation fund and shall retain one dollar to defray expenses incurred in handling such funds. Nothing herein shall be construed to limit the power of the court to order additional forms of restitution including public or charitable work or reparation to the victim, to the crime victims' compensation fund, or otherwise as authorized by law.

2. All awards made to injured victims under sections 595.010 to 595.070 and all appropriations for administration of sections 595.010 to 595.070 except sections 595.050 and 595.055, shall be made from the crime victims' compensation fund. Any unexpended balance remaining in the crime victims' compensation fund at the end of each biennium shall not be subject to the provision of section 33.080, RSMo, requiring the transfer of such unexpended balance to the ordinary revenue fund of the state, but shall remain in the crime victims' compensation fund. In the event that there are insufficient funds in the crime victims' compensation fund to pay all claims in full, all claims shall be paid on a pro rata basis. If there are no funds in the crime victims' compensation fund, then no claim shall be paid until funds have again accumulated in the crime victims' compensation fund.

3. When judgment is entered against a defendant in the sum of twenty-six dollars as provided in this section and such sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the state of Missouri to such defendant an amount equal to the unpaid amount of such judgment. Such amount shall be paid forthwith to the crime victims' compensation fund and satisfaction of such judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for such twenty-six-dollar judgment.

4. All interest earned as a result of investing funds in the crime victims' compensation fund shall be paid into the crime victims' compensation fund and not into the general revenue of this state.

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595.050. Contracts for services to victims, requirements, limitations¹

1. From funds appropriated for services to victims of crime, the director may contract with public or private agencies to provide assistance to victims of crime through direct services, emergency services, crisis intervention counseling and victim advocacy. Any such contract may consist solely of, or may include, educational and informational services to the public about the availability of services for victims of crime which are designed to alleviate the results of criminal acts. Under no circumstances shall the expenditures from general revenue for the purpose provided in this section exceed the amount of ninety thousand dollars each fiscal year.

2. The director may contract with an agency only if it agrees as part of the contract to expend funds from other sources in an amount equal to at least two-thirds of the assistance granted under subsection 1 of this section on the program for which assistance was granted in addition to the assistance granted. The director shall not contract with any agency to provide assistance to victims of crime presently being provided by the agency within the same community.

3. Each contract shall be subject to review by the director at least annually and no contract shall be renewed for more than three years.

(L. 1981, p. 649, § 9.)

¹ Revisor's note—1981: Effective upon appropriation of funds.

595.055. Services for victims, requirements—exceptions¹

1. No public or private agency shall provide service to a victim of crime pursuant to any contract made under section 595.050 unless the incident is reported to an appropriate law enforcement office within forty-eight hours after its occurrence or within forty-eight hours after the victim of crime, a dependent, or a member of the family of the victim reasonably could be expected to make such a report.

2. No service may be provided under section 595.050 if the victim of crime:

(1) Was the perpetrator or a principal or accessory involved in the commission of the crime for which he otherwise would have been eligible for assistance under the provisions of section 595.050; or

(2) Is injured as a result of the operation of a motor vehicle, boat or airplane unless the same was used as a weapon in a deliberate attempt to inflict personal injury upon any person.

(L. 1981, p. 649, § 10.)

¹ Revisor's note—1981: Effective upon appropriation of funds.

Law Review Commentaries

Forgotten victims: Missouri solution. 50

UMKC LRev. 533 (1982).

595.060. Rules and regulations—promulgation—suspension—reinstatement

The director shall promulgate rules and regulations necessary to implement the provisions of sections 595.010 to 595.070 as provided in chapter 536, RSMo. In the performance of its functions under sections 595.010 to 595.070, the division is authorized to promulgate rules pursuant to chapter 536, RSMo, prescribing the procedures to be followed in the filing of applications and the proceedings under sections 595.010 to 595.070. Any rule or portion of a rule promulgated pursuant to sections 595.010 to 595.070 may be suspended by the joint committee on administrative rules if after hearing thereon the committee finds that such rule or portion of the rule is beyond or contrary to the statutory authority of the agency which promulgated the rule, or is inconsistent with the legislative intent of the authorizing statute. The general assembly may reinstate such rule by concurrent resolution signed by the governor.

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595.065. Orders for payment, when effective

Orders for payment of compensation pursuant to section 595.045 shall be made only as to injuries or death resulting from offenses occurring on or after July 1, 1982.

(L. 1981, p. 650, § 12, eff. Jan. 1, 1983.)

Law Review Commentaries

Forgotten victims: Missouri solution. 50

UMKC LRev. 533 (1982).

595.070. Effective dates of various sections

Section 595.045 shall become effective October 1, 1981, sections 595.050 and 595.055 shall become effective upon appropriation of funds for services to victims of crime, and all other sections shall become effective January 1, 1983.

* * *

217.255. Compensation of inmates for labor, academic or education classes—hours of work, exceptions—payment to crime victim compensation fund, when

1. The division shall adopt rules and regulations for establishing in each of the correctional institutions a system of compensation to the inmates confined therein, which shall provide for the compensation of each inmate for work or services performed and for satisfactory performance in academic or vocational education classes during his confinement.

2. The division shall prepare graduated wage schedules for payment of compensation to inmates.

3. Eight hours of work per day shall constitute a day of labor for each inmate, and no inmate shall be required to work more than eight hours unless there is an emergency situation as designated by the division director or the chief administrative officer.

4. The department shall have the authority to pay into the crime victim's compensation fund from an inmate's compensation, the amount owed by the inmate to the crime victim's compensation fund, provided that the inmate has failed to pay the amount owed to the fund prior to entering a department of corrections facility.

* * *

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559.021. Conditions of probation

1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to insure that the defendant will not again violate the law. When a defendant is placed on probation he shall be given a certificate explicitly stating the conditions on which he is being released.

2. In addition to such other authority as exists to order conditions of probation, the court may order such conditions as the court believes will serve to compensate the victim, any dependent of the victim, or society. Such conditions may include, but shall not be limited to

(1) Restitution to the victim or any dependent of the victim, in an amount to be determined by the judge; and

* * *

491.280. Fees of witnesses

1. Witnesses shall be allowed fees for their services as follows:

For attending any court of record, reference, arbitrators, commissioner, clerk or coroner, at any inquest or inquiry of damages, within the county where the witness resides, each day	\$3.00
For like attendance out of the county where witness resides, each day	4.00
For traveling each mile in going to and returning from the place of trial	.07

~~For attending under the law to perpetuate testimony, the same fees as are allowed for attending a court of record in like cases; but witnesses attending in more than one case on the same day and at the same place shall only be allowed fees in one case; and any witness who shall claim fees for attendance in two or more cases on the same day and at the same place shall not be allowed any fees that day.~~

2. Each witness shall be examined on oath by the court or by the clerk when the court shall so order, as to the number of days of his actual necessary attendance, under subpoena or recognizance, and the number of miles necessarily traveled; and in every case where a witness shall not, as such, actually and necessarily attend such court, and withdraw himself from his business during the full time for which pay is claimed, he shall not be allowed for more than one day's attendance.

* * *

575.270. Tampering with a witness—tampering with a victim¹

1. A person commits the crime of "tampering with a witness" if, with purpose to induce a witness or a prospective witness in an official proceeding to disobey a subpoena or other legal process, or to absent himself or avoid subpoena or other legal process, or to withhold evidence, information or documents, or to testify falsely, he:

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(b) Any conviction or acquittal for any substantive offense under section 575.270, RSMo, shall be a bar to subsequent punishment for contempt arising out of the same act;

(2) By revocation of any form of pretrial release, or the forfeiture of bail or both and to issuance of a bench warrant for the defendant's arrest or remanding him to custody. The revocation may be made whether the violation of the order complained of has been committed by the defendant personally or was caused or encouraged to have been committed by such defendant.

* * *

191.225. Costs of examination in rape cases payable by department, when, conditions

1. The department of social services shall make payments to hospitals and physicians, out of appropriations made for that purpose, to cover the cost of the medical examination not covered by insurance of persons who may be a victim of the crime of rape as defined in section 566.030, RSMo, if:

- (1) The victim consents in writing to the examination;
- (2) The report of the examination is made on a form approved by the attorney general; and
- (3) The report of the examination is filed by the victim with the prosecuting attorney of the county in which the alleged rape occurred.

2. A minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of parent or guardian of the minor is not required for such examination. The hospital or physician making the examination shall give written notice to the parent or guardian of a minor that such an examination has taken place.

3. The attorney general shall develop the forms and procedures for gathering evidence under the provisions of this section and shall furnish every hospital and physician in this state with copies of such forms and procedures.

4. Reasonable hospital and physicians charges for eligible examinations shall be billed to and paid by the department of social services.

(L.1980, p. 318, § 1.)

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- (1) Threatens or causes harm to any person or property; or
- (2) Uses force, threats or deception; or
- (3) Offers, confers or agrees to confer any benefit, direct or indirect, upon such witness; or
- (4) Conveys any of the foregoing to another in furtherance of a conspiracy.

2. A person commits the crime of "victim tampering" if, with purpose to do so, he prevents or dissuades or attempts to prevent or dissuade any person who has been a victim of any crime or a person who is acting on behalf of any such victim from:

(a) Making any report of such victimization to any peace officer, or state, local or federal law enforcement officer or prosecuting agency or to any judge;

(b) Causing a complaint, indictment or information to be sought and prosecuted or assisting in the prosecution thereof;

(c) Arresting or causing or seeking the arrest of any person in connection with such victimization.

3. Tampering with a witness in a prosecution, tampering with a witness with purpose to induce the witness to testify falsely, or victim tampering is a class C felony if the original charge is a felony. Otherwise, tampering with a witness or victim tampering is a class A misdemeanor. Persons convicted under this section shall not be eligible for parole.

(Amended by L.1983, p. —, S.B. No. 24, § 1.)

491.600. Courts with criminal jurisdiction may issue orders to protect witness or victim

Any court with jurisdiction over any criminal matter may, in its discretion, upon substantial evidence, which may include hearsay, that intimidation or dissuading of any person who is a victim or who is a witness has occurred or is reasonably likely to occur, issue orders including but not limited to the following:

(1) An order that a defendant not engage in activity as defined by section 575.270, RSMo, and maintain a prescribed geographic distance from a witness or victim;

(2) An order that a person before the court other than a defendant, including but not limited to a subpoenaed witness or other person entering the courtroom of said court, not engage in activity as defined by section 575.270, RSMo, and maintain a prescribed geographic distance from a witness or victim;

(3) An order that any person described in subdivision (1) or (2) of this section have no connection whatsoever with any specified witness or any victim, except through an attorney under such reasonable restrictions as the court may impose.

(L.1983, p. —, S.B. No. 24, § 1 (§ 2).)

Library References

Criminal Law § 1222.

C.J.S. Criminal Law § 2008 et seq.

491.610. Violation of protective orders, penalties

Any person violating any order made pursuant to section 491.600 may be punished in any of the following ways:

(1) For any substantive offense described in section 575.270 where such violation of an order is a violation of section 575.270, RSMo, as a contempt of the court making such order; however, no finding of contempt shall be a bar for prosecution for a substantive offense as defined in section 575.270, RSMo, but:

(a) Any person so held in contempt shall be entitled to credit for any punishment imposed against any sentence imposed or conviction of said substantive offense; and

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CHAPTER 455. ADULT ABUSE

Sec.		Sec.	
455.010.	Definitions.	455.035.	Protection orders.
455.015.	Venue.	455.040.	Hearings, when—duration of orders—copies of orders to be given.
455.020.	Relief may be sought.	455.045.	Temporary relief available.
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Sec.		Sec.	
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455.075.	Costs of legal fees.	455.225.	Shelter request exceeding funds, allocation priorities.
455.080.	Law enforcement agencies to consider prior complaints—establishment of crisis teams.	455.230.	Annual reports by shelters, contents—confidentiality.
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SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE (COUNTIES AND CITY OF ST. LOUIS)

455.200. Definitions.

Law Review Commentaries

Remaining problems with the Adult Abuse Act.
Stanley D. Brown, 38 J. of Mo.Bar 582 (1982).

Library References

Breach of Peace § 15.
C.J.S. Breach of Peace § 17 et seq.

455.010. Definitions

As used in sections 455.010 to 455.085, unless the context clearly indicates otherwise, the following terms shall mean:

(1) "Abuse", inflicting, other than by accidental means, or attempting to inflict physical injury, on an adult or purposely placing another adult in apprehension of immediate physical injury;

(2) "Adult", any person eighteen years of age or older or otherwise emancipated;

(3) "Court", the circuit or associate circuit court of the state of Missouri;

(4) "Ex parte order of protection", an order of protection issued by the court before the respondent has received notice of the petition or an opportunity to be heard on it;

(5) "Full order of protection", an order of protection issued after a hearing on the record where the respondent has received notice of the proceedings and has had an opportunity to be heard;

(6) "Household member", spouses, persons related by blood or marriage, and other persons of the opposite sex jointly residing in the same dwelling unit, who are eighteen years of age or older or who are emancipated;

(7) "Order of protection", either an ex parte order of protection or a full order of protection;

(8) "Petitioner", a household member who has filed a verified petition under the provisions of section 455.020;

(9) "Respondent", the household member against whom a verified petition has been filed.

(L. 1980, p. 441, § 1.)

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455.015. Venue

The petition shall be filed in the county where the petitioner resides, where the alleged incident of abuse occurred, or where the respondent may be served.

(L. 1980, p. 442, § 2.)

455.020. Relief may be sought

1. Any adult who has been subject to abuse by a present or former adult household member may seek relief under sections 455.010 to 455.085 by filing a verified petition alleging such abuse by the respondent.

2. An adult's right to relief under sections 455.010 to 455.085 shall not be affected by his leaving the residence or household to avoid abuse.

(L. 1980, p. 442, § 3.)

455.025. Duties of circuit clerks—rules, forms, instructions

Except as provided under section 455.030, clerks under the supervision of a circuit clerk shall explain to litigants not represented by counsel the procedures for filing all forms and pleadings necessary for the presentation of their petition to the court. The clerk shall advise the petitioner of his right to file a motion and affidavit to sue in forma pauperis pursuant to the Missouri Rules of Civil Procedure. Notice of the fact that clerks will provide such assistance shall be conspicuously posted in the clerks' offices. The location of the office where a petition can be filed shall be conspicuously posted in the court building. The performance of duties prescribed in this section shall not constitute the practice of law as defined in section 484.010, RSMo. All duties of the clerk prescribed in this section shall be performed without cost to the litigants. The supreme court may promulgate rules as necessary to govern conduct of court clerks under sections 455.010 to 455.085, and shall provide forms for petitions and written instructions on filling out all forms and pleadings necessary for the presentation of the petition to the court.

Notes of Decisions

In general 1 Pro se petitions 2

1. In general

Adult Abuse Act litigant does not have to prove to circuit clerk that he or she is not represented by counsel in the proceedings but, rather, all litigant need do is advise circuit clerk he or she is not represented by counsel in proposed filing under Adult Abuse Act, and circuit clerk must then render assistance to such litigant as is mandated by this section requiring circuit clerk to explain procedures for filing forms and pleadings and to

advise petitioner in regard to his or her right to file motion and affidavit to sue in forma pauperis. State ex rel. Patrick v. Kidd (App.1982) 631 S.W.2d 666.

Circuit clerk has no duty under Adult Abuse Act to assist litigants already represented by lawyer in Adult Abuse Act proceedings. Id.

2. Pro se petitions

Policy of circuit court in not allowing filing of pro se petition under Adult Abuse Act when person seeking to do so is represented by counsel in a pending action for dissolution of marriage was contrary to intent of Act. State ex rel. Patrick v. Kidd (App.1982) 631 S.W.2d 666.

455.030. Filings

1. When the court is unavailable after business hours or on holidays or weekends, a verified petition for protection from abuse or a motion for hearing on violation of any order of protection under sections 455.010 to 455.085 may be filed before any available circuit or associate circuit court judge in the city or county having jurisdiction to hear the petition. An ex parte order may be granted pursuant to section 455.035.

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2. All papers in connection with the filing of a petition or the granting of an ex parte order of protection or a motion for a hearing on a violation of an order of protection under this section shall be certified by such judge or the clerk within the next regular business day to the circuit court having jurisdiction to hear the petition.

(L. 1980, p. 442, § 5.)

455.035. Protection orders

Upon the filing of a verified petition under sections 455.010 to 455.085 and for good cause shown in the petition, the court may immediately issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section. An ex parte order of protection shall be in effect until the time of the hearing.

(L. 1980, p. 442, § 6.)

Notes of Decisions

1. Validity

Provisions in Adult Abuse Act permitting courts to issue ex parte orders of protection to exclude respondents from home or from contact with children for 15 day period did not deprive respondent of due process where Act was necessary to secure important governmental interests in protection of victims of abuse and prevention of

further abuse, only time ex parte order could be issued was when there was immediate and present danger of abuse, nothing in Act suggested that respondent could not obtain hearing earlier than 15 days after order was granted, ex parte order was required to be served upon respondent, and only judge in his discretion could issue ex parte order. State ex rel. Williams v. Marsh (Sup.1982) 626 S.W.2d 223.

455.040. Hearings, when—duration of orders—copies of orders to be given

1. Not later than fifteen days after the filing of a petition under sections 455.010 to 455.085 a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the petitioner has proved the allegation of abuse by a preponderance of the evidence, the court may issue a full order of protection for a definite period of time, not to exceed one hundred eighty days. Upon motion by either party, and after a hearing by the court, the full order of protection may be renewed for a period not to exceed one hundred eighty days.

2. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition and any ex parte order of protection to be personally served upon the respondent at least five days prior to such hearing; the court shall cause a copy of any full order of protection to be personally served upon the respondent.

3. A copy of any order of protection granted under sections 455.010 to 455.085 shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction where the petitioner resides. A notice of expiration or of termination of any order of protection shall be issued to such local law enforcement agency.

(L. 1980, p. 442, § 7.)

Notes of Decisions

1. In general

Wife had standing to object to trial court's ruling that Adult Abuse Act was unconstitutional where wife derived actual and justiciable interest susceptible of protection from trial court's holding that she had unqualified right to relief available under Act. State ex rel. Williams v. Marsh (Sup. 1982) 626 S.W.2d 223.

Wife, who sought to enforce Adult Abuse Act against her husband, had standing to challenge trial court's ruling that Act was unconstitutional even though husband did not appear in case where controversy was adequately presented to Supreme Court on appeal from trial court's ruling and on wife's petition for writ of mandamus in briefs filed by wife, trial court judge, and amicus curiae. Id.

MISSOURI

455.045. Temporary relief available

Any ex parte order of protection granted under sections 455.010 to 455.085 shall be to protect the petitioner from abuse and may include:

- (1) Restraining the respondent from abusing, threatening to abuse, molesting or disturbing the peace of the petitioner;
- (2) Restraining the respondent from entering the premises of the dwelling unit of petitioner when the dwelling unit is:
 - (a) Jointly owned, leased or rented and jointly occupied by both parties; or
 - (b) Owned, leased or rented by petitioner individually; or
 - (c) Jointly owned, leased or rented by petitioner and a person other than respondent; provided, however, no spouse shall be denied relief under this section by reason of the absence of a property interest in the dwelling unit;
- (3) A temporary order of custody of minor children where appropriate.

(L. 1980, p. 443, § 8.)

Validity $\frac{1}{2}$ Notes of Decisions

$\frac{1}{2}$ Validity

This section and § 455.050 of Adult Abuse Act permitting trial court to include certain provisions in ex parte or full order of protection, violation of which were misdemeanors, did not violate constitutional requirements of separation and nondelegation of power where court's discretion was limited to determining whether situation warranted issuance of all or less than all of three restraining orders expressly available under the Act. State ex rel. Williams v. Marsh (Sup.1982) 626 S.W.2d 223.

Adult Abuse Act did not violate constitutional prohibition against imprisonment for debt where Act made violation of ex parte order of protection of which respondent has notice of violation of full order of protection criminal but set forth no punishment.

455.050. Permanent relief available—child custody provisions

1. Any full order of protection granted under sections 455.010 to 455.085 shall be to protect the petitioner from abuse and may include:

- (1) Temporarily enjoining the respondent from abusing, threatening to abuse, molesting or disturbing the peace of the petitioner;
- (2) Temporarily enjoining the respondent from entering the premises of the dwelling unit of the petitioner when the dwelling unit is:
 - (a) Jointly owned, leased or rented and jointly occupied by both parties; or
 - (b) Owned, leased or rented by petitioner individually; or
 - (c) Jointly owned, leased or rented by petitioner and a person other than respondent; provided, however, no spouse shall be denied relief under this section by reason of the absence of a property interest in the dwelling unit.

2. When the court has, after hearing for any full order of protection, issued an order of protection, it may, in addition:

- (1) Award custody of any minor child born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending or has been made, and the best interests of the child require such order be issued; and awarding visitation and temporary custody;

ishment for violation of ancillary orders dealing with child support, maintenance, or attorney fees. Id.

1. In general

In proceeding on wife's petition for an ex parte order of protection under the Adult Abuse Act, trial judge exceeded jurisdiction by ordering file relating to wife's dissolution of marriage case to be brought over from another division for examination, whereupon he dismissed the adult abuse case, granted custody of parties' children to the husband and decreed that it was inappropriate for the couple and their children to live in the same residence; the parties were before the judge for the sole purpose of a hearing on the adult abuse case and there was no notice to the parties of any action to be taken by the trial judge in connection with the marriage dissolution proceeding. State ex rel. Duello v. Hoester (App.1981) 618 S.W.2d 242.

- (2) Award child support where appropriate;
- (3) Award maintenance to petitioner when petitioner and respondent are lawfully married.

3. A verified petition seeking orders for maintenance, support, custody, temporary custody or visitation, shall contain allegations relating to those orders and shall pray for the orders desired.

4. In making an award of custody the court shall consider all relevant factors including:

- (1) The wishes of the child's parents as to his custodian;
- (2) The wishes of the child as to his custodian;
- (3) The interaction and interrelationship of the child with his parents, his siblings, and any other person who may significantly affect the child's best interests;
- (4) The child's adjustment to his home, school, and community; and
- (5) The mental and physical health of all individuals involved.

5. The court shall grant to the noncustodial parent rights to visitation with any minor child born to or adopted by the parties, unless the court finds, after hearing, that visitation would endanger the child's physical health, impair his emotional development or would otherwise conflict with the best interests of the child.

6. The court may make an order requiring the noncustodial party to pay an amount reasonable and necessary for the support of any child to whom he owes a duty of support when no prior order of support is outstanding and after all relevant factors have been considered, including:

- (1) The father's primary responsibility for support of his child;
- (2) The financial resources of the child;
- (3) The financial resources of the custodial parent;
- (4) The standard of living the child had enjoyed prior to the filing of a petition under sections 455.010 to 455.085;
- (5) The physical and emotional condition of the child, and his educational needs;
- (6) The financial resources and needs of the noncustodial parent.

7. (1) The court may grant a maintenance order to a party if it finds that:

- (a) The petitioner and respondent are lawfully married;
- (b) The party lacks sufficient property to provide for his reasonable needs;
- (c) The party is unable to support himself through appropriate employment or is the custodian of a child to whom the respondent has a legal duty of support and whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home; and
- (d) There is no existing order for maintenance;

(2) The maintenance order shall be in such amounts and for such periods of time, not to exceed one hundred eighty days except as otherwise provided in sections 455.010 to 455.085, or the court deems just, and after considering all relevant factors including:

- (a) The financial resources of the party seeking maintenance, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
- (c) The standard of living established during the marriage;
- (d) The age, and the physical and emotional condition of the spouse seeking maintenance;
- (e) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance;

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(f) The conduct of a party seeking maintenance during marriage.

(L. 1980, p. 443, § 9.)

Notes of Decisions

1. Validity

Adult Abuse Act did not violate constitutional prohibition against imprisonment for debt where Act made violation of ex parte order of protection of which respondent has notice of violation of full order of protection criminal but set forth no punishment for violation of ancillary orders dealing with child support, maintenance, or attorney fees.

State ex rel. Williams v. Marsh (Sup. 1982) 626 S.W.2d 223.

This section and § 455.045 of Adult Abuse Act permitting trial court to include certain provisions in ex parte or full order of protection, violation of which were misdemeanors, did not violate constitutional requirements of separation and nondelegation of power where court's discretion was limited to determining whether situation warranted issuance of all or less than all of three restraining orders expressly available under the Act. Id.

455.055. Assignment of wages

1. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or other income to the person entitled to receive the payments.

2. The assignment is binding on the employer or other payor of the funds two weeks after service upon him of notice that it has been made. The payor shall withhold from such earnings or other income the amount specified in the assignment and shall transmit payments to the person specified in the order. Section 432.030, RSMo, or any other law or statute to the contrary notwithstanding, the payor may deduct from each payment a sum not exceeding one dollar as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

455.060. Modification of orders, when—termination—appeal

1. After notice and hearing, the court may modify an order of protection at any time; upon subsequent motion filed by either party together with an affidavit showing a change in circumstances sufficient to warrant the modification. All full orders of protection shall be final orders and appealable and shall be for a fixed period of time not to exceed one hundred eighty days except as otherwise provided herein.

2. Any order for child support, custody, temporary custody, visitation or maintenance entered under sections 455.010 to 455.085 shall terminate prior to the time fixed in the order upon the issuance of a subsequent order pursuant to chapter 452, RSMo, or any other Missouri statute.

3. No order entered pursuant to sections 455.010 to 455.085 shall be res judicata to any subsequent proceeding, including, but not limited to, any action brought under chapter 452, RSMo, 1978 as amended.

4. Any order of protection shall terminate, unless otherwise provided by law, upon the entry of a decree of dissolution of marriage or legal separation.

5. Any order of protection or order for child support, custody, temporary custody, visitation or maintenance entered under sections 455.010 to 455.085 shall terminate when the parties voluntarily consent to the termination of the order by a written consent filed with the court which entered the order.

(L. 1980, p. 444, § 11.)

455.065. Subsequent modification of orders

1. Provisions of any order respecting maintenance or support may be modified only as to installments occurring subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable.

2. Provisions of any order respecting custody may be modified only if the court finds, upon the basis of facts that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child.

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3. Provisions of any order respecting visitation may be modified when the modification would serve the best interests of the child.

(L. 1980, p. 445, § 12.)

455.070. Proceedings independent of others

All proceedings under sections 455.010 to 455.085 are independent of any proceedings for dissolution of marriage, legal separation, separate maintenance and other actions between the parties and are in addition to any other available civil or criminal remedies, unless otherwise specifically provided herein.

(L. 1980, p. 445, § 13.)

455.075. Costs of legal fees

The court may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under sections 455.010 to 455.085 and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court shall consider all relevant factors, including the financial resources of both parties, and may order that the amount be paid directly to the attorney, who may enforce the order in his name.

455.080. Law enforcement agencies to consider prior complaints—establishment of crisis teams

1. Law enforcement agencies may establish procedures to insure that dispatchers and officers at the scene of an alleged incident of abuse or violation of an order of protection can be informed of any recorded prior incident of abuse involving the abused party and can verify the effective dates and terms of any recorded order of protection.

2. The law enforcement agency shall apply the same standard for response to an alleged incident of abuse or a violation of any order of protection as applied to any like offense involving strangers. Relevant factors in determining priority of response shall include whether the abused party has been the victim of a prior incident of abuse or has, upon verified petition, been granted an order of protection.

3. Law enforcement agencies may establish domestic crisis teams or, if the agency has fewer than five officers whose responsibility it is to respond to calls of this nature, individual officers trained in methods of dealing with family and household quarrels. Such teams or individuals may be supplemented by social workers, ministers or other persons trained in counseling or crisis intervention. When an alleged incident of family or household abuse is reported, the agency may dispatch a crisis team or specially trained officer, if available, to the scene of the incident.

4. The officer at the scene of an alleged incident of abuse may inform the abused party of available judicial remedies for relief from adult abuse.

(L. 1980, p. 445, § 15.)

455.085. Arrest for violation of order—penalties

1. When a law enforcement officer has probable cause to believe that a violation of an effective order of protection has occurred, he shall have the authority to arrest the respondent whether or not the violation occurred in the presence of the arresting officer.

2. The same procedures, including those designed to protect constitutional rights, shall be applied to the respondent as those applied to any individual detained in police custody.

3. Violation of the terms and conditions of an ex parte order of protection, of which the respondent has notice, shall be a class C misdemeanor. Violation of the terms and conditions of a full order of protection shall be a class C misdemeanor.

(L. 1980, p. 445, § 16.)

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455.200. Definitions

As used in sections 455.200 to 455.230, unless the context clearly requires otherwise, the following words and phrases mean:

(1) "Designated authority", the board, commission, agency, or other body designated under the provisions of section 455.210 as the authority to administer the allocation and distribution of funds to shelters;

(2) "Domestic violence", attempting to cause or causing bodily injury to a family or household member, or placing a family or household member by threat of force in fear of imminent physical harm;

(3) "Family or household member", a spouse, a former spouse, person living with another person whether or not as spouses, parent, or other adult person related by consanguinity or affinity, who is residing or has resided with the person committing the domestic violence and dependents of such persons;

(4) "Shelter for victims of domestic violence" or "shelter", a facility established for the purpose of providing temporary residential service or facilities to family or household members who are victims of domestic violence.

(L. 1982, p. 376, § 1 (§ 2).)

455.205. Funding shelters—fees for marriage licenses and decrees of dissolution of marriage, how established, amount—reports

1. The governing body of any county, or of any city not within a county, by order of ordinance may impose a fee upon the issuance of a marriage license and may impose a fee upon the entry of a decree of dissolution of marriage by a circuit court under the provisions of section 452.305, RSMo.

2. The fee imposed upon the issuance of a marriage license shall be five dollars, shall be paid by the person applying for the license, and shall be collected by the recorder of deeds at the time the license is issued. The fee imposed upon the entry of a decree of dissolution of marriage shall be ten dollars, shall be paid by the party who filed the petition, and shall be collected by the clerk of the court as other costs of the proceedings are collected.

3. At the end of each month, the recorder of deeds and the clerk of the circuit court shall file a verified report with the county court of the fees collected pursuant to the provisions of subsection 2 of this section. The report may be consolidated with the monthly report of other fees collected by such officers. Upon the filing of the reports the recorder of deeds and the clerk of the circuit shall forthwith pay over to the county treasurer all fees collected pursuant to subsection 2 of this section. The county treasurer shall deposit all such fees in a special fund to be expended only to provide financial assistance to shelters for victims of domestic violence as provided in sections 455.200 to 455.230.

(L. 1982, p. 376, § 1 (§ 3).)

Library References
Divorce — 188.
Marriage — 25.

C.J.S. Divorce § 196.
C.J.S. Marriage § 24.

455.210. Administration by designated authority, how established—powers—expense, limitation

The governing body of the city or county shall designate in the order or ordinance imposing the fees, as provided in section 455.205, an appropriate board, commission, agency or other body of the county, or city, as the authority to administer the allocation and

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distribution of the funds to shelters for victims of domestic violence in the manner provided in sections 455.200 to 455.230. The members of the designated authority may be reimbursed from the special fund for moneys actually and necessarily expended in the performance of their duties under the provisions of sections 455.200 to 455.230, but not more than five percent of the fees collected pursuant to section 455.205 may be used for such purposes.

(L. 1982, p. 377, § 1 (§ 4).)

Library References
Asylums — 3.

C.J.S. Asylums and Institutional Care Facilities
§§ 5 to 8.

455.215. Applications for shelter funding, contents, when filed—payments from fund made when

1. A shelter for victims of domestic violence may apply to the designated authority for funds to be used for the funding of the shelter. All applications shall be submitted by the first day of October of the year preceding the calendar year for which the funding is desired, and shall include all of the following:

- (1) Evidence that the shelter is incorporated in this state as a nonprofit corporation;
- (2) A list of the directors of the corporation, and a list of the trustees of the shelter if different;
- (3) The proposed budget of the shelter for the following calendar year;
- (4) A summary of the services proposed to be offered in the following calendar year;
- (5) An estimate of the number of persons to be served during the following calendar year.

2. Upon receipt of an application for funds from a shelter that meets the criteria set forth in section 455.220, the designated authority, on or before the fifteenth day of November of the year in which the application is filed, shall notify the shelter, in writing, whether it is eligible to receive funds, and if the shelter is eligible, specify the amount available for that shelter from the fees collected pursuant to section 455.205.

3. Funds allocated to shelters pursuant to this section shall be paid to the shelters twice annually, on the first day of January and the first day of July of the years following the year in which the application is filed.

(L. 1982, p. 377, § 1 (§ 5).)

Library References
Asylums — 3.

C.J.S. Asylums and Institutional Care Facilities
§§ 5 to 8.

455.220. Requirements for shelter to qualify for funds

1. To qualify for funds allocated and distributed pursuant to section 455.215 a shelter shall meet all of the following requirements:

- (1) Be incorporated in the state as a nonprofit corporation;
- (2) Have trustees who represent the racial, ethnic and socioeconomic diversity of the community to be served, at least one of whom must possess personal experience in confronting or mitigating the problems of domestic violence;
- (3) Receive at least twenty-five percent of its funds from sources other than funds distributed pursuant to section 455.215. These other sources may be public or private and may include contributions of goods or services, including materials, commodities, transportation, office space or other types of facilities or personal services;
- (4) Provide residential service or facilities for children when accompanied by a parent, guardian, or custodian who is a victim of domestic violence and who is receiving temporary residential service at the shelter;

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(5) Require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter.

2. A shelter does not qualify for funds if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin, or ancestry.

(L. 1982, p. 377, § 1 (§ 6).)

Library References
Asylums — 3.

C.J.S. Asylums and Institutional Care Facilities
§§ 5 to 8.

455.225. Shelter request exceeding funds, allocation priorities

If a designated authority receives applications from more than one qualified shelter for victims of domestic violence and the requests for the funds exceed the amount of funds available, funds shall be allocated on the basis of the following priorities:

- (1) To shelters in existence on August 13, 1982;
- (2) To shelters offering or proposing to offer the broadest range of services and referrals to the community served, including medical, psychological, financial, educational, vocational, child care services and legal services;
- (3) To other facilities offering or proposing to offer services specifically to victims of physical domestic violence;
- (4) To other qualified shelters.

(L. 1982, p. 378, § 1 (§ 7).)

Library References
Asylums — 3.

C.J.S. Asylums and Institutional Care Facilities
§§ 5 to 8.

455.230. Annual reports by shelters, contents—confidentiality

1. A shelter for victims of domestic violence that receives funds pursuant to sections 455.200 to 455.230 shall file an annual report with the designated authority of the county, or of the city not within a county, in which it is located, on or before the thirty-first day of March of the year following the year in which funds were received. The annual report shall include statistics on the number of persons served by the shelter, the relationship of the victim of domestic violence to the abuser, the number of referrals made for medical, psychological, financial, educational, vocational, child care services or legal services, and shall include the results of an independent audit. No information contained in the report shall identify any person served by the shelter or enable any person to determine the identity of any such person.

2. The designated authority shall compile the reports filed pursuant to subsection 1 of this section annually.

(L. 1982, p. 378, § 1 (§ 8).)

Category		Citation
1.	Victim Compensation Program	53-9-101 et seq.
1.1	Responsible Agency	53-9-103(5); 53-9-104
1.2	Eligible Claimants	53-9-103(6); 53-9-125
1.3	Losses Covered	53-9-128
1.4	Minimum and Maximum Award	53-9-128(5),(7)(c)
1.5	Required to Show Financial Need	
1.6	Required to Report Crime - Time Limit	53-9-125(3)
1.7	Filing of Claim - Time Limit	53-9-125(1)
1.8	Emergency Award	53-9-126
1.9	Funding	46-18-248; 53-9-109
2.	Restitution	
2.1	Sentencing Option	46-18-201(1)(a)(iv),(2); 46-18-241 et seq.
2.2	Mandatory Condition of Probation	
2.3	Mandatory Condition of Parole	
2.4	Mandatory Sentence	
2.5	Administration/Enforcement	46-18-245; 46-18-247 et seq.
3.	Escrow and Forfeiture of Offender Profits	53-9-104(e)
4.	Witness Fees	26-2-501 et seq.; 46-15-104
5.	Victim's Bill of Rights	
6.	Protection from Intimidation	
6.1	Crime Defined	45-7-206
6.2	Protective Orders	
7.	Victim Notification	
7.1	of Compensation Program	53-9-104(2)(d)
7.2	of Witness Fees	
7.3	of Final Disposition	
7.4	of Plea Agreement	
7.5	of Cancelled Proceeding	
7.6	of Right to Participate in Sentencing Hearing	
7.7	of Parole Hearing	
7.8	of Release of Offender	
7.9	of Escape of Offender	
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	46-18-112; 46-18-242
8.2	Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	46-5-301 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	46-15-411
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	46-15-401 et seq.
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	53-9-104(2)(a)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	53-9-107 (victim compensation records)
15.4 Sexual Assault Counselor Privilege	

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Montana Revised Codes Annotated

CHAPTER 9
SERVICES FOR VICTIMS OF CRIME

Part 1 — The Crime Victims Compensation Act of Montana

Section

- 53-9-101. Short title.
53-9-102. Legislative purpose and intent.
53-9-103. Definitions.
53-9-104. Powers and duties of division.
53-9-105. Rehabilitation of victims.
53-9-106. Attorneys' fees.
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53-9-109. Crime victims compensation account.
53-9-110. Receipt of federal funds.
53-9-111. Penalty for fraudulently obtaining benefits.
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53-9-121. Application for compensation.
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53-9-123. Evidence of condition.
53-9-124. Enforcement of division's orders — improper assertion of privilege.
53-9-125. Limitations on awards.
53-9-126. Tentative award of compensation.
53-9-127. Award of compensation.
53-9-128. Compensation benefits.
53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception.
53-9-130. Reconsideration and review of division's decisions.
53-9-131. Appeals.
53-9-132. Subrogation.
53-9-133. Effect of award on probation and parole of offender.

53-9-102. Legislative purpose and intent. It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons.

History: En. 71-2602 by Sec. 2, Ch. 527, L. 1977; R.C.M. 1947, 71-2602.

53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

- (a) a victim;
- (b) a dependent of a deceased victim; or
- (c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

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- (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 two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;
- (c) social security, medicare, and medicaid;
- (d) workers' compensation;
- (e) wage continuation programs of any employer;
- (f) proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or
- (g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(3) "Criminally injurious conduct" means conduct that:

- (a) occurs or is attempted in this state;
- (b) results in bodily injury or death; and
- (c) 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 as described in Title 61.

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of workers' compensation provided for in 2-15-1702.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

- (a) criminally injurious conduct;
- (b) his good faith effort to prevent criminally injurious conduct; or
- (c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

History: En. 71-2603 by Sec. 3, Ch. 527, L. 1977; R.C.M. 1947, 71-2603; amd. Sec. 1, Ch. 367, L. 1979.

53-9-104. Powers and duties of division. (1) The division shall:

- (a) adopt rules to implement this part;
 - (b) prescribe forms for applications for compensation; and
 - (c) determine all matters relating to claims for compensation.
- (2) The division may:

- (a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

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(b) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(c) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(d) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(e) require that any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, or article relating to such crime to deposit any proceeds owed to such individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime or any surviving dependents of the victim, if such individual is convicted of that crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. If, after all funds due the victim have been paid to the victim under this section, there remain additional funds in the escrow account, such funds shall be returned to the individual charged or convicted of the crime.

History: En. 71-2605 by Sec. 5, Ch. 527, L. 1977; R.C.M. 1947, 71-2605; amd. Sec. 2, Ch. 367, L. 1979.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-9-105. Rehabilitation of victims. The division shall refer to the department of social and rehabilitation services victims who have been permanently disabled through criminally injurious conduct, who are receiving benefits under this part, and who in the opinion of the division may be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under such programs.

History: En. 71-2616 by Sec. 16, Ch. 527, L. 1977; R.C.M. 1947, 71-2616.

Cross-References

Vocational rehabilitation, Title 53, ch. 7.

53-9-106. Attorneys' fees. (1) The division may grant attorneys' fees to attorneys for representing claimants before the division. Any attorney's fee granted by the division shall be in addition to compensation awarded the claimant under this part.

(2) The division may regulate the amount of the attorney's fee in any claim under this part when an attorney is representing a claimant.

(3) In cases under this part that go before the workers' compensation judge, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the judge.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney.

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History: En. 71-2618 by Sec. 18, Ch. 527, L. 1977; R.C.M. 1947, 71-2618.

53-9-107. Public inspection and disclosure of division's records. The records the division maintains in its possession in the administration of this part are open to public inspection and disclosure in accordance with the provisions of 39-71-221 through 39-71-224.

History: En. 71-2619 by Sec. 19, Ch. 527, L. 1977; R.C.M. 1947, 71-2619.

53-9-108. Limitation of benefit entitlements to proportionate share of available funds. Claimants receiving benefits under this part are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the division determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. Such reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for such retroactive benefits.

History: En. 71-2620 by Sec. 20, Ch. 527, L. 1977; R.C.M. 1947, 71-2620.

53-9-109. Crime victims compensation account. There is a crime victims compensation account in the state special revenue fund. There shall be paid into this account 18% of the fines assessed and bails forfeited on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61, that are a result of citations or tickets issued by the highway patrol.

53-9-110. Receipt of federal funds. The division may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts.

History: En. 71-2622 by Sec. 22, Ch. 527, L. 1977; R.C.M. 1947, 71-2622.

53-9-111. Penalty for fraudulently obtaining benefits. Any person who knowingly makes a false claim or a false statement or uses any other fraudulent device in connection with any claim is guilty of theft as provided in 45-6-301 and upon conviction shall, in addition to being punished as provided by that section, forfeit and repay any compensation paid under this part.

History: En. 71-2623 by Sec. 23, Ch. 527, L. 1977; R.C.M. 1947, 71-2623.

53-9-112 through 53-9-120 reserved.

53-9-121. Application for compensation. An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the division.

History: En. 71-2606 by Sec. 6, Ch. 527, L. 1977; R.C.M. 1947, 71-2606(1).

53-9-122. Informal hearings. The division may hold informal hearings in order to make determinations regarding the compensability of a claim. At such hearings, the division may subpoena witnesses and documents

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as set forth in 2-4-104. Hearings held under this section are not considered contested case hearings under the Montana Administrative Procedure Act. However, the division shall adopt rules regarding its informal hearing procedures.

History: En. 71-2607 by Sec. 7, Ch. 527, L. 1977; R.C.M. 1947, 71-2607.

53-9-123. Evidence of condition. (1) The division may require the claimant to supplement the application with any reasonably available medical reports relating to the injury for which compensation is claimed.

(2) If the physical condition of a victim or claimant is material to a claim, the division may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The division shall pay for such examination or autopsy. 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 division a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the division shall furnish him a copy of the report. If the victim is deceased, the division, on request, shall furnish the claimant a copy of the report.

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

History: En. 71-2608 by Sec. 8, Ch. 527, L. 1977; R.C.M. 1947, 71-2608.

53-9-124. Enforcement of division's orders — improper assertion of privilege. If a person refuses to comply with an order of the division or asserts a privilege to withhold or suppress evidence relevant to a claim, except privileges arising from the attorney-client relationship, the division may make any just order, including denial of the claim.

History: En. 71-2609 by Sec. 9, Ch. 527, L. 1977; R.C.M. 1947, 71-2609.

53-9-125. Limitations on awards. (1) Compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. Unless the division determines that the interests of justice otherwise require in a particular case, compensation 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.

(3) Compensation 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 division finds there was good cause for the failure to report within that time.

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(4) In order to be entitled to benefits under this part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury.

History: En. 71-2606 by Sec. 6, Ch. 527, L. 1977; R.C.M. 1947, 71-2606(2) thru (7); amd. Sec. 4, Ch. 367, L. 1979.

53-9-126. Tentative award of compensation. If the division 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.

History: En. 71-2614 by Sec. 14, Ch. 527, L. 1977; R.C.M. 1947, 71-2614.

53-9-127. Award of compensation. (1) The division shall award compensation benefits under this part if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(2) 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.

(3) The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under 53-9-126.

History: (1)En. 71-2604 by Sec. 4, Ch. 527, L. 1977; Sec. 71-2604, R.C.M. 1947; (2), (3)En. 71-2610 by Sec. 10, Ch. 527, L. 1977; Sec. 71-2610, R.C.M. 1947; R.C.M. 1947, 71-2604, 71-2610.

53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 ⅔% of the wages received at the time of the criminally injurious conduct, subject to a

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maximum of \$125. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 ⅔% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of \$125 per week. Weekly compensation payments shall be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding \$1,100, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed \$100 per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed \$100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

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(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed \$20,000, and the limitations of subsection (6) apply to compensation under this subsection (7).

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

History: (1) thru (7)En. 71-2612 by Sec. 12, Ch. 527, L. 1977; Sec. 71-2612, R.C.M. 1947; (8)En. 71-2613 by Sec. 13, Ch. 527, L. 1977; Sec. 71-2613, R.C.M. 1947; R.C.M. 1947; 71-2612, 71-2613(1).

53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception. (1) An award is not subject to execution, attachment, garnishment, or other process.

(2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation 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.

History: En. 71-2613 by Sec. 13, Ch. 527, L. 1977; R.C.M. 1947, 71-2613(2), (3).

53-9-130. Reconsideration and review of division's decisions.

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

(2) The right of reconsideration does not affect the finality of a division decision for the purpose of appeal.

History: En. 71-2615 by Sec. 15, Ch. 527, L. 1977; R.C.M. 1947, 71-2615.

53-9-131. Appeals. (1) After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the workers' compensation judge for review. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming or modifying the division's determination.

(2) All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

(3) Notwithstanding Title 2, chapter 4, part 7, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 71-2617 by Sec. 17, Ch. 527, L. 1977; R.C.M. 1947, 71-2617.

53-9-132. Subrogation. (1) If a claimant seeks compensation under this part and compensation is awarded, the division is entitled to full subrogation against a judgment or recovery received by the claimant against the offender for all compensation paid under this part. The division's right of

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subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender within 1 year from the date the criminally injurious conduct occurred, the division may institute the action in the name of the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the division shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.

(3) If the division institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the division in pursuit of the action, the excess shall be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the division has paid compensation under this part and damages for which the division has not paid compensation, then the division's subrogation interest shall apply only to that proportion of the judgment or recovery for which it has paid compensation. In a civil 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 amounts of the various items of damages awarded. A claimant may not make recoveries against the offender in such a way as to avoid and preclude the division from receiving its proper subrogation share as provided in this section. The division shall release its lien provided for in subsection (1) above upon receipt of its subrogation share.

53-9-133. Effect of award on probation and parole of offender.

(1) When placing any convicted person on probation the court may set as a condition of probation the payment to the state of an amount equal to any benefits paid by the division to a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

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Part 2
Form of Sentence

Part Cross-References

Excessive sanctions, cruel and unusual punishment, Art. II, sec. 22, Mont. Const.	Determination of what sentence may be imposed, 45-1-201.
Punishments allowed — military courts, 10-1-401.	Rehabilitation instead of prosecution for addicts, 45-9-202.

46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) restitution, as provided in subsection (2);
- (v) payment of the costs of confinement;
- (vi) payment of a fine as provided in 46-18-231;
- (vii) payment of costs as provided in 46-18-232 and 46-18-233;
- (viii) payment of costs of court appointed counsel as provided in 46-8-113;
- (ix) community service;
- (x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
- (xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If restitution is imposed as a condition under subsection (1)(a) or (1)(b), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

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46-18-241. Condition of restitution. As provided in 46-18-201, a sentencing court may require an offender to make restitution to any victim of the offense.

History: En. Sec. 1, Ch. 426, L. 1983.

46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that restitution may be a proper condition of a deferred or suspended sentence or the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender's financial resources and future ability to pay restitution; and

(b) documentation of the victim's pecuniary loss, submitted by the victim.

(2) Where no presentence report is authorized or requested, the court may receive evidence of the offender's ability to pay and the victim's loss at the time of sentencing.

History: En. Sec. 2, Ch. 426, L. 1983.

46-18-243. Definition. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) "Victim" means:

(a) a person who suffers loss of property, bodily injury, or death as a result of:

(i) criminally injurious conduct; or

(ii) his good faith effort to prevent criminally injurious conduct;

(b) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for his pecuniary loss.

History: En. Sec. 3, Ch. 426, L. 1983.

46-18-244. Type and time of payment — defenses. (1) The court shall specify the amount, method, and time of payment to the victim and may permit payment in installments. The court may not establish a payment schedule extending beyond the period for which the sentence has been suspended or deferred under 46-18-201.

(2) In determining the amount, method, and time of payment, the court shall consider the financial resources and future ability of the offender to pay. The court may provide for payment to a victim up to but not in excess

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of the pecuniary loss caused by the offense. The offender may assert any defense that he could raise in a civil action for the loss sought to be compensated by the restitution order.

History: En. Sec. 4, Ch. 426, L. 1983.

46-18-245. Supervision of payment. The court may order a probation officer, restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment.

History: En. Sec. 5, Ch. 426, L. 1983.

46-18-246. Waiver or modification of payment. An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that he will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition, amount, method, or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule, but not beyond the period for which the sentence has been suspended or deferred under 46-18-201.

History: En. Sec. 6, Ch. 426, L. 1983.

46-18-247. Default. (1) If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why he should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and place for a hearing or, if he fails to appear as ordered, issue a warrant for his arrest. The order or warrant must be accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering the order, may at any time, for good cause shown, reduce the term of confinement and waive satisfaction of the restitution order.

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment thereof, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments.

History: En. Sec. 7, Ch. 426, L. 1983.

46-18-248. Rights of crime victims' compensation account. (1) Whenever a victim is paid from the crime victims' compensation account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

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(2) The rights of the crime victims' compensation account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction which is part of the same continuous scheme of criminal activity of an offender.

History: En. Sec. 8, Ch. 426, L. 1983.

46-18-249. Civil actions by victim. (1) Sections 46-18-241 through 46-18-249 do not limit or impair the right of a victim to sue and recover damages from the offender in a civil action.

(2) The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action.

(3) Any restitution paid by the offender to the victim must be set off against any pecuniary loss awarded to the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any setoff asserted by the defendant under this section.

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Part 5

Witness Fees

26-2-501. Witnesses in courts of record and before certain court officers. (1) Witness fees are as follows:

(a) for attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions or commissioners to assess damages or otherwise, for each day, \$10;

(b) for mileage in traveling to the place of trial or hearing, each way, for each mile, a mileage allowance as provided in 2-18-503.

(2) However, no officer of the United States, the state of Montana, or any county, incorporated city, or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and no witness shall receive fees in any more than one criminal case on the same day.

26-2-502. Witnesses in courts not of record — civil actions. Witnesses in courts not of record in civil actions and proceedings shall receive \$3 for each day's actual attendance and mileage as provided in 2-18-503 for each mile actually traveled in going from their residences by the usual traveled route to the court and return.

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26-2-503. Witnesses in courts not of record — criminal actions and on coroner's inquests. Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive \$3 per day for actual attendance and mileage as provided in 2-18-503 for each mile actually and necessarily traveled from their places of residence to the court and return.

46-15-104. Expenses of witness. When a person attends before a magistrate, grand jury, or court as a witness in a criminal case upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

- (a) testify or inform falsely;
- (b) withhold any testimony, information, document, or thing;
- (c) elude legal process summoning him to testify or supply evidence; or
- (d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.

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46-18-112. Content of investigation. Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish the probation officer, on request, the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court.

Part 3

Procedure in Regard to Property Seized

46-5-301. Return to court of things seized under search warrant. The return of the warrant and all instruments, articles, and things seized shall be made promptly before the judge who issued the warrant or, if he is absent or unavailable, before the nearest available judge and shall be accompanied by a written inventory of any property taken, verified by the person executing the warrant. The judge shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

History: En. 95-712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-712.

46-5-302. Custody and disposition of things seized under search warrant. The judge before whom the instruments, articles, or things are returned shall enter an order providing for their custody or appropriate disposition pending further proceedings.

History: En. 95-713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-713.

Cross-References

Seizure and forfeiture of unlawful cigarettes,
16-11-147.

46-5-303. Custody and disposition of things seized without search warrant. (1) Any peace officer seizing any instruments, articles, or things must give a receipt to the person from whose possession they are taken, but failure to give such a receipt shall not render the evidence seized inadmissible upon a trial.

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(2) If an arrest has been made, all instruments, articles, or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken and thereafter handled and disposed of in accordance with 46-5-301, 46-5-302, and 46-5-304. If the person arrested is released without a charge being preferred against him, all instruments, articles, or things seized from him other than contraband shall be returned to him upon release.

(3) If no arrest has been made, such instruments, articles, or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with 46-5-301, 46-5-302, and 46-5-304 or returned to the person from whom they were taken.

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46-5-304. Return of property seized. (1) Any person claiming the right to possession of property seized as evidence may apply to the judge to whom it has been delivered for its return. The judge shall give such notice as he deems adequate to the county attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership.

(2) If the right to possession is proved to the judge's satisfaction, he shall order the property other than contraband returned if:

- (a) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or
- (b) all proceedings in which it might be required have been completed.

History: En. 95-715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-715.

46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized and if after proper inquiry the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from the sale, after deduction of the costs of storage, preservation of the property, and the sale, must be paid into the county treasury.

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Part 4

Evidence in Cases Involving Sexual Offenses

46-15-401. When videotaped testimony admissible. For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-613, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

History: En. 95-1814 by Sec. 1, Ch. 384, L. 1977; R.C.M. 1947, 95-1814; amd. Sec. 1, Ch. 151, L. 1979; amd. Sec. 1, Ch. 8, L. 1983.

Compiler's Comments

1983 Amendment: Inserted "45-5-505, or 45-5-613".

46-15-402. Procedure at videotaping. (1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by this part.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under this part shall be allowed to attend the videotape proceedings.

History: En. 95-1815 by Sec. 2, Ch. 384, L. 1977; R.C.M. 1947, 95-1815.

46-15-403. Court order to protect privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: En. 95-1816 by Sec. 3, Ch. 384, L. 1977; R.C.M. 1947, 95-1816.

46-15-404 through 46-15-410 reserved.

46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

Category	Citation
1. Victim Compensation Program	81-1801 et seq.
1.1 Responsible Agency	81-1802
1.2 Eligible Claimants	81-1815, 81-1818, 81-1822
1.3 Losses Covered	81-1819
1.4 Minimum and Maximum Award	81-1823
1.5 Required to Show Financial Need	81-1822(6)
1.6 Required to Report Crime - Time Limit	81-1821
1.7 Filing of Claim - Time Limit	81-1821
1.8 Emergency Award	81-1820
1.9 Funding	81-1835
2. Restitution	
2.1 Sentencing Option	29-2219(2)(j)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	81-1836 et seq.
4. Witness Fees	29-2710; 33-139
5. Victim's Bill of Rights	81-1848
6. Protection from Intimidation	
6.1 Crime Defined	28-919
6.2 Protective Orders	81-1848(3)
7. Victim Notification	
7.1 of Compensation Program	81-1848(4)
7.2 of Witness Fees	81-1848(5)
7.3 of Final Disposition	81-1848(1)
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	81-1848(2)
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	81-1848(1)
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	29-2261(3)(a),(4)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	23-1201; 29-120
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	81-1848(8)
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	81-1848(7)
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	81-1843, 81-1845 et seq.
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	See, 29-2219(5) (counseling mandatory condition of probation for domestic violence offender)
14.1 Protective Orders	42-901, 42-924 et seq.
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ARTICLE 18

CRIME VICTIMS AND WITNESSES

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(a) CRIME VICTIM'S REPARATIONS

81-1801. Terms, defined. As used in sections 81-1801 to 81-1841, unless the context otherwise requires:

(1) Board shall mean the Crime Victim's Reparations Board;

(2) Dependent shall mean a relative of a deceased victim, who was dependent upon the victim's income at the time of death, including children of a victim born after a victim's death;

(3) Personal injury shall mean actual bodily harm;

(4) Relative shall mean spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild; brother, sister, half brother, half sister, or spouse's parents;

(5) Victim shall mean a person who is injured or killed as a result of conduct specified in section 81-1818; and

(6) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 1978, LB 910, § 1; Laws 1981, LB 328, § 4.

81-1802. Crime Victim's Reparations Board; created; members; administration by Nebraska Commission on Law Enforcement and Criminal Justice. A Crime Victim's Reparations Board is hereby created. The board shall consist of three members to be appointed by the Governor subject to approval by the Legislature. At least one member of the board shall be a person licensed to practice law in Nebraska. For budgetary and administrative purposes only, the board shall be within the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 1978, LB 910, § 2; Laws 1981, LB 328, § 5.

81-1803. Board; members; appointment; terms. Within thirty days after January 1, 1979, the Governor shall appoint the initial members to the board. Members shall serve for terms of six years, except that of the members first appointed one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years.

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81-1804. Board; members; vacancy. When a vacancy occurs on the board, appointment to fill the vacancy shall be made for the balance of the term. As the terms of the initial appointees to the board expire, succeeding appointees shall be appointed to six-year terms. Members whose terms have expired shall continue to serve until their successors have been appointed.

Source: Laws 1978, LB 910, § 4.

81-1805. Board; members; per diem; expenses. The members of the board shall be paid a per diem of one hundred dollars for each day actually and necessarily engaged in the performance of their duties as members of such board. In addition, members of the board shall receive reimbursement for actual and necessary expenses as provided in sections 84-306.01 to 84-306.05 for state employees.

Source: Laws 1978, LB 910, § 5; Laws 1981, LB 204, § 199.

81-1806. Board; hearing officers; appoint; duties; personnel. The board shall, with the approval of the commission, appoint one or more hearing officers, who shall be licensed to practice law in the state, to conduct hearings, take testimony in proceedings under sections 81-1801 to 81-1841, and make determinations of any matter subject to sections 81-1801 to 81-1841. Each hearing officer shall report his or her findings of fact and conclusions of law to the board, together with the reasons for the findings and conclusions. The board shall act only after consideration of the report and such other evidence as it considers appropriate. The board may overrule any determination made by a hearing officer and may decrease or increase any compensation awarded by such hearing officer pursuant to sections 81-1801 to 81-1841.

The executive director of the commission may appoint and fix the duties of personnel necessary to carry out the functions of the board under sections 81-1801 to 81-1841.

Source: Laws 1978, LB 910, § 6; Laws 1981, LB 328, § 6.

81-1807. Victim; compensation; application. Any person who may be eligible for compensation under sections 81-1801 to 81-1841 may make application to the board on forms provided by the board. If the person entitled to make application is a minor or mentally incompetent, the application may be made on his behalf by his parent, guardian, or any other individual authorized to administer his estate.

Source: Laws 1978, LB 910, § 7.

81-1808. Victim; compensation; submit medical reports; hearing officer; order. In order to be eligible for compensation the applicant shall, prior to any hearing on an application, submit available reports from any physician or surgeon who has treated or examined the victim

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in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the hearing officer or the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or a report on the cause of death of the victim by an impartial medical expert would be of material aid to its determination, the hearing officer or the board shall order the reports and examination.

81-1809. Application; board; decision; hearing; procedure. The board shall consider and rule upon any application made under the provisions of sections 81-1801 to 81-1841. The board may upon its own motion order a hearing, specifying the time and place it shall be held. If a hearing is ordered, the board shall give written notice to the applicant. If, after consideration without a hearing, the decision is unfavorable to the applicant, in whole or in part, the board shall furnish him a written statement of the reason of the ruling. The applicant may request a hearing on his application within thirty days after receipt of the statement and the board shall specify a time and place for a hearing and shall give written notice to the applicant. If no request for a hearing is made within the specified time, the decision of the board shall be final.

Source: Laws 1978, LB 910, § 9.

81-1810. Board or hearing officer; proceedings; powers; applicants; rights. (1) The board or its hearing officer may hold hearings, sit and act at the times and places and take the testimony that the board or the hearing officers consider advisable, and administer oaths or affirmations to witnesses. The hearing officer or the board shall have full powers by subpoena to compel the appearance of witnesses and the production of any relevant evidence, but no subpoena shall be issued unless signed by a member of the board. Application to a court for aid in enforcing the subpoena may be made in the name of the board by any board member.

(2) The applicant and any other person having a substantial interest in the proceeding may appear and be heard, produce evidence, and cross-examine witnesses in person or by an attorney. The board or its hearing officer may hear other persons who in its or his or her judgment may have relevant evidence to submit.

(3) The board or its hearing officer shall have access to criminal history record information, as defined in section 29-3506, and investigative information of the law enforcement agency which handled the offense which is the basis for the victim's application for compensation.

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81-1811. Offense; proof of conviction; how treated. If a person has been convicted of an offense on which a claim under sections 81-1801 to 81-1841 is based, proof of that conviction shall be taken as conclusive evidence that the offense occurred and that such person committed the offense, unless an appeal or a proceeding with regard to it is pending.

81-1812. Hearing officer or board; order; determine and allow attorney's fees. The hearing officer or the board may, as part of an order entered under sections 81-1801 to 81-1841, determine and allow reasonable attorney's fees not to exceed five per cent of any compensation awarded. If the decision of a hearing officer or the board is appealed, the court shall determine reasonable attorney's fees.

Source: Laws 1978, LB 910, § 12.

81-1813. Board; regulations, forms, and materials; provide. The board may, subject to the approval of the commission, make, rescind, and amend regulations prescribing the procedures to be followed in the filing of applications and proceedings under sections 81-1801 to 81-1841, and any other matters the board considers appropriate, including special circumstances under which an award under sections 81-1801 to 81-1841 may exceed ten thousand dollars. The board shall make available all forms and educational materials necessary to promote the existence of the programs to persons throughout the state.

Source: Laws 1978, LB 910, § 13; Laws 1981, LB 328, § 7.

81-1814. Compensation; board; formulate standards for uniform application. For the purpose of determining the amount of compensation payable under sections 81-1801 to 81-1841, the board shall formulate standards for uniform application of this act and take into consideration rates and amounts of compensation payable for injuries and death under other laws of this state and of the United States and the availability of funds appropriated for the purposes of sections 81-1801 to 81-1841.

Source: Laws 1978, LB 910, § 14.

81-1815. Compensation; to whom paid. In a case in which a person is injured or killed as a result of conduct specified in sections 81-1801 to 81-1841, or by any act of any other person which is within the description of offenses listed in sections 81-1801 to 81-1841, the board or a hearing officer may order the payment of compensation:

- (1) To or for the benefit of the injured person;
- (2) In the case of personal injury or death of the victim, to a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury; or
- (3) In the case of death of the victim, to or for the benefit of any one or more of the dependents of the victim.

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81-1816. Board or hearing officer; order; considerations; suspend proceedings; when. (1) In determining whether to make an order under sections 81-1801 to 81-1841, the board or hearing officer shall consider all circumstances determined to be relevant, including, but not limited to, provocation, consent, or any other behavior of the victim which directly or indirectly contributed to his injury or death, the prior social history of the victim, if any, and the need for financial aid.

(2) An order may be made under sections 81-1801 to 81-1841, whether or not any person is prosecuted for or convicted of an offense arising out of the act which caused the injury or death involved in the application. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under sections 81-1801 to 81-1841 for such period as it considers appropriate on the ground that a prosecution for an offense arising out of the act which caused the injury or death involved in the application has been commenced or is imminent.

Source: Laws 1978, LB 910, § 16.

81-1817. Compensation awarded; collateral compensation; how treated. (1) The board or a hearing officer may award compensation for losses and expenses allowable under sections 81-1801 to 81-1841 for which the applicant is not compensated by the offender or a person on behalf of the offender, by the United States, by a state or any of its subdivisions or agencies, or by a private source of emergency awards under section 81-1820, for injury or death compensable under sections 81-1801 to 81-1841. Life insurance proceeds and social security payments shall not be treated as forms of such collateral compensation.

(2) If compensation is awarded under sections 81-1801 to 81-1841 and the person receiving it also receives a collateral sum under sections 81-1801 to 81-1841 which has not been deducted from it, he or she shall refund to the board either the amount of the collateral sum or the amount of compensation paid to him or her under sections 81-1801 to 81-1841, whichever is less.

Source: Laws 1978, LB 910, § 17.

81-1818. Personal injury or death; situations for which compensation is permitted. The board or hearing officer may order the payment of compensation for personal injury or death which resulted from:

- (1) An attempt on the part of the applicant to prevent the commission of crime, to apprehend a suspected criminal, to aid or attempt to aid a police officer in the performance of his duties, or to aid a victim of a crime; or
- (2) The commission or attempt on the part of one other than the applicant of an unlawful criminal act.

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81-1819. Payment of compensation; order; losses covered. The board or hearing officer may order the payment of compensation for:

- (1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim;
- (2) Loss of earning power as a result of total or partial incapacity of the victim and reasonable expenses of job retraining or similar employment-oriented rehabilitative services for the victim;
- (3) Pecuniary loss to the dependents of the deceased victim; and
- (4) Any other loss resulting from the personal injury or death of the victim which the board determines to be reasonable.

Source: Laws 1978, LB 910, § 19.

81-1820. Board; emergency award of compensation; when; conditions. If it appears to the board that, prior to taking action on an application, the claim is one for which compensation is probable, and undue hardship will result to the applicant if immediate payment is not made, the board may make an emergency award of compensation to the applicant pending a final decision in the case, except that:

- (1) The amount of the emergency compensation shall not exceed five hundred dollars;
- (2) The amount of the emergency compensation shall be deducted from the final compensation made to the applicant; and
- (3) The excess amount of the emergency compensation over the final amount shall be repaid by the applicant to the board.

Source: Laws 1978, LB 910, § 20.

81-1821. Application; statute of limitations. No order for the payment of compensation shall be entered under this act unless the application has been submitted to the board within two years after the date of the personal injury or death and the personal injury or death was the result of an incident or offense which had been reported to the police within three days of its occurrence or if the incident or offense could not reasonably have been reported within that period, within three days of the time when a report could reasonably have been made.

(a) CRIME VICTIM'S REPARATIONS

81-1822. Compensation; situations when not awarded. No compensation shall be awarded if the victim:

- (1) Is a relative of the offender and aided or abetted the offender in the commission of the unlawful act;
- (2) Is at the time of the injury, which results in the death of the victim, living with the offender as a member of the same family or household or maintaining a sexual relationship with the offender or with a member of the offender's family and aided or abetted the offender in the commission of the unlawful act;

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(3) Violated a penal law of the state, which violation caused or contributed to his or her injuries or death;

(4) Is injured as a result of the operation of a motor vehicle, boat, or airplane unless the vehicle was used in a deliberate attempt to injure or kill the victim;

(5) Aided or abetted the offender in the commission of the unlawful act; or

(6) Incurs an economic loss which does not exceed ten per cent of the claimant's net financial resources. For purposes of this subdivision a victim's net financial resources do not include the present value of future earnings and shall be determined by the board by deducting from the victim's total financial resources:

- (a) One year's earnings;
- (b) The victim's equity in his or her home, not exceeding thirty thousand dollars;
- (c) One motor vehicle; and
- (d) Any other property which would be exempt from execution under section 25-1552 or 40-101.

Nothing in this section shall limit payments to a victim by an offender which are made as full or partial restitution of the victim's actual pecuniary loss.

81-1823. Award; limitations; how paid. Except as provided in section 81-1813, no compensation shall be awarded under sections 81-1801 to 81-1841 in an amount in excess of ten thousand dollars for each applicant per incident. Each award shall be paid in installments unless the board decides otherwise.

Source: Laws 1978, LB 910, § 23.

81-1824. Offenses occurring prior to January 1, 1979; excluded. No order for payment of compensation under sections 81-1801 to 81-1841 shall be made for injuries or death resulting from incidents or offenses occurring prior to January 1, 1979.

Source: Laws 1978, LB 910, § 24.

81-1825. Board; subrogation rights. When an order for the payment of compensation for personal injury or death is made, the board shall be subrogated to the cause of action of the applicant against the person responsible for the injury or death and shall be entitled to bring an action against such person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the board shall pay the balance to the applicant.

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81-1826. Department of Correctional Services; confined persons; provide for employment; exceptions. The Department of Correctional Services shall, as far as possible, provide for the employment, eight hours per day, of confined persons by private businesses, except those youths committed to the Youth Development Center-Kearney, the Youth Development Center-Geneva, and other similar institutions. The employment may be provided under section 83-183 or 83-184, or under section 81-1827.

Source: Laws 1978, LB 910, § 26; Laws 1980, LB 319, § 3.

81-1827. Business enterprise; employment of persons committed to the department. (1) The director may enter into such contracts as may be necessary to fully implement the terms of sections 81-1801 to 81-1841. Such contractual arrangements may include, but not be limited to, rental or lease agreements for such buildings or portions thereof on the grounds of any Department of Correctional Services facilities, together with the real estate needed for reasonable access to and egress from the leased buildings, with a private corporation for the purpose of establishing and operating a factory for the manufacture and processing of goods, wares, or merchandise, or any other business or commercial enterprise deemed by the director to be consistent with the proper training and rehabilitation of persons committed to the department.

(2) Nothing in this section shall operate to limit the director's authority to enter into contractual arrangements as may be provided elsewhere in law.

(3) Any corporation operating a factory or other business or commercial enterprise under this section may employ offenders committed to the Department of Correctional Services and persons conditionally released subject to the provisions of section 83-184.

Source: Laws 1978, LB 910, § 27; Laws 1980, LB 319, § 4.

81-1828. Repealed. Laws 1980, LB 319, § 12.

81-1829. Department of Correctional Services; establish and maintain farms. The Department of Correctional Services may establish and maintain farms to provide food for the institutions under the jurisdiction of the department and also to provide opportunity for all inmates to work eight hours per day.

Source: Laws 1978, LB 910, § 29; Laws 1980, LB 319, § 5.

81-1830. False claim; penalty. Any person who knowingly makes a false claim under sections 81-1801 to 81-1841 shall be guilty of a Class I misdemeanor and shall forfeit any benefit received and shall repay the state for any payment of compensation made under sections 81-1801 to 81-1841.

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81-1831. Right of action; abate; exception. The rights to compensation created under sections 81-1801 to 81-1841 are personal and shall not survive the death of a victim or dependent entitled to them, except that if the death occurs after an application for compensation has been filed with the board the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate.

81-1832. Determinations, decisions, and awards; appeal. All determinations, decisions, and awards made by the board or any hearing officer may be appealed pursuant to the provisions of Chapter 84, article 9.

Source: Laws 1978, LB 910, § 32.

81-1833. Board; report; contents. The board shall prepare and submit to the commission a biennial report of its activities under sections 81-1801 to 81-1841 including the name of each applicant, a brief description of the facts in each case, and the amount of compensation awarded, except that if the applicant was the victim of a sexual assault the victim's name shall not be included in the report but shall be available to the Governor or a member of the Legislature upon request to the board. Such report shall be submitted to the Governor and Clerk of the Legislature as part of the commission's report submitted pursuant to section 81-1423.

Source: Laws 1978, LB 910, § 33; Laws 1979, LB 322, § 60; Laws 1980, LB 319, § 6; Laws 1981, LB 545, § 37; Laws 1981, LB 328, § 8.

81-1834. Award; payment. Any award to a claimant and any judgment in favor of a claimant under sections 81-1801 to 81-1841 shall be certified by the board to the Director of Administrative Services, who shall promptly issue his warrant for payment of such award of judgment out of the Victim's Compensation Fund if sufficient money is available in such fund.

Source: Laws 1978, LB 910, § 34.

81-1835. Victim's Compensation Fund; established; purpose; investment. There is hereby established in the state treasury a Victim's Compensation Fund from which all awards or judgments under sections 81-1801 to 81-1841 shall be paid. This fund shall be in such amount as the Legislature shall determine to be reasonably sufficient to meet anticipated claims. When the amount of money in the Victim's Compensation Fund is not sufficient to pay any awards or judgments under sections 81-1801 to 81-1841, the Director of Administrative Services shall immediately advise the Legislature, and request an emergency appropriation to satisfy such awards and judgments. Any

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money in the Victim's Compensation Fund available for investment shall be invested by the state investment officer pursuant to applicable provisions of law.

81-1836. Person convicted of crime; payment for thoughts, feelings, or opinions; deposited in fund. Every person, firm, corporation, partnership, association, or other legal entity contracting with any person or the representative or assignee of any person, accused of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio, or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions, or emotions regarding such crime, shall pay over to the board any money which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. The board shall deposit such money in the Victim's Compensation Fund.

Source: Laws 1978, LB 910, § 36.

81-1837. Money in Victim's Compensation Fund; returned; when. Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five years have elapsed from the deposit of money into the Victim's Compensation Fund by the accused and further that no actions are pending against such person pursuant to sections 81-1801 to 81-1841, the board shall immediately pay the money deposited by the accused to such person.

Source: Laws 1978, LB 910, § 37.

81-1838. Five-year period; when commenced. Notwithstanding any other provision of law with respect to the timely bringing of an action, the five-year period provided for in section 81-1837 shall not begin to run until the accused has deposited money into the Victim's Compensation Fund.

Source: Laws 1978, LB 910, § 38.

81-1839. Board; payments from fund for legal representation; when. Notwithstanding the provisions of sections 81-1836 to 81-1838, the board shall make payments from the fund to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such money shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

Source: Laws 1978, LB 910, § 39.

81-1840. Action to defeat purpose of act; null and void. Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

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81-1841. Act, how cited. Sections 81-1801 to 81-1841 shall be known and may be cited as the Nebraska Crime Victim's Reparations Act.

Source: Laws 1978, LB 910, § 41.

81-1842. Sexual assault victim; records; confidential. The name of any victim of a sexual assault appearing in information or records of the Crime Victim's Reparations Board when the victim is applying for compensation under sections 81-1801 to 81-1841 shall not be made public.

Source: Laws 1980, LB 319, § 2.

(b) CRIME VICTIMS AND WITNESSES ASSISTANCE

81-1843. Legislative findings. (1) The Legislature finds and declares:

(a) That there is a need to develop methods to reduce the trauma and discomfort that victims of a crime and witnesses to a crime may experience because often such victims or witnesses are further victimized by the criminal justice system;

(b) That when crime strikes, the chief concern of the criminal justice system is apprehending and dealing with the criminal, and that the victim's needs are frequently forgotten;

(c) That victims often become isolated and receive little practical advice or necessary care;

(d) That witnesses must make arrangements to appear in court regardless of their own schedules, child-care responsibilities, or transportation problems;

(e) That witnesses often endure long waits before testifying, are subjected to confusing circumstances while testifying, and receive no information as to the ultimate disposition of the case;

(f) That a large number of victims and witnesses are unaware of both their rights and obligations;

(g) That unreported crimes occur at a rate that is more than twice the rate of reported crimes and that the reasons people give for not reporting crimes indicate that they are disenchanted with the criminal justice system;

(h) That the single most important factor determining whether or not a case will be solved is the information that the victim supplies to the responding police officer;

(i) That although the State of Nebraska has the Crime Victim's Reparations Board and compensation is available for medical expenses, lost earning power, and reasonable rehabilitation costs, the

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application process is difficult, complex, and time consuming and few victims are aware that the compensation provisions exist.

(2) It is therefore the intent of the Legislature to provide ways of improving the attitudes of victims and witnesses toward the criminal justice system and to provide for faster and more complete recovery by the victim from the effects of the crime through the establishment of pilot project centers for victim and witness assistance.

Source: Laws 1981, LB 477, § 1.

81-1844. Crime Victim and Witness Assistance Fund; created; administration; use. There is hereby created a fund to be known as the Crime Victim and Witness Assistance Fund. Such fund shall contain such amounts as may be appropriated by the Legislature and shall be used only for the purposes set forth in sections 81-1843 to 81-1848. Such fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice.

Source: Laws 1981, LB 477, § 2.

81-1845. Victim and witness assistance center; selection and establishment; Nebraska Commission on Law Enforcement and Criminal Justice; duties; funding. (1) Any public or private nonprofit agency may apply to the Nebraska Commission on Law Enforcement and Criminal Justice for selection and funding as a victim and witness assistance center pursuant to sections 81-1843 to 81-1848.

(2) The commission shall consider the following factors, together with any other factors it deems appropriate, in selecting applicants to receive funds and be designated as a victim and witness assistance center:

- (a) The number of volunteers that the proposed center will utilize;
- (b) The stated goals of the applicant;
- (c) The potential number of people that may be served by the proposed center and the needs of the community for such a center;
- (d) Evidence of community support for the establishment of the proposed center; and
- (e) The organizational structure of the agency which will operate the proposed center and provide services to victims and witnesses of crimes.

(3) Upon evaluation of all applicants, the Nebraska Commission on Law Enforcement and Criminal Justice shall select a number of public or private nonprofit agencies which the commission deems qualified for designation to receive funding for the establishment and operation of such centers.

(4) The commission shall, upon the establishment of such centers, conduct appraisals of their performance to determine which of the

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centers shall receive continuation grants. The commission shall report its finding to the Governor and the Clerk of the Legislature.

Source: Laws 1981, LB 477, § 3.

81-1846. Victim and witness assistance centers; purposes. The centers shall be designed to:

- (1) Assist criminal justice agencies in giving more consideration and personal attention to victims and witnesses through the delivery of services to victims and witnesses of crimes;
- (2) Provide a model for other community-based efforts to aid victims and witnesses;
- (3) Sensitize law enforcement officials, communications technicians, and supervisors to the needs of victims of crime and encourage a concerned approach to such victims;
- (4) Attempt to decrease the incidence of unreported crimes; and
- (5) Assure that victims and witnesses are informed of the progress of the case in which they are involved.

Source: Laws 1981, LB 477, § 4.

81-1847. Victim and witness assistance centers; services provided. Services provided by the centers shall include, but not be limited to:

- (1) Providing assistance to victims in preparing claims for submission to the Nebraska Crime Victim's Reparations Board;
- (2) Establishing a means for volunteers to work with criminal justice agencies to promote greater sensitivity to the needs of victims and witnesses;
- (3) Providing follow-up support services to victims of violent crime and their families to insure that they receive necessary assistance through available community resources;
- (4) Providing elderly victims of crime with services appropriate to their special needs;
- (5) Providing liaison and referral systems to special counseling facilities and community service agencies for victims;
- (6) Providing transportation and household assistance to those victims and witnesses participating in the criminal justice process;
- (7) Notifying friends, relatives, and the employer of a victim, if requested;
- (8) Arranging for verification of medical benefits and assistance when applying for compensation from the Crime Victim's Reparations Board;
- (9) Notifying witnesses prior to their being subpoenaed in criminal cases; and
- (10) Notifying witnesses of changes in the court calendar to avoid unnecessary trips to the court or spending unnecessary time in court.

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81-1848. Victims and witnesses of crimes; rights; enumerated. Victims and witnesses of crimes have the following rights:

- (1) To be informed by local law enforcement agencies and the county attorney of the final disposition of the case. If the crime charged is a felony, the victim shall be notified whenever the defendant or perpetrator is released from custody;
- (2) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court;
- (3) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;
- (4) To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services;
- (5) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;
- (6) To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;
- (7) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, shall be returned to the person within ten days of being taken;
- (8) To be provided with appropriate employer intercession services to insure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances;
- (9) To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter; and
- (10) To have the family members of all homicide victims afforded all of the rights under subsections (1) to (4) and (6) to (9) and services analogous to those provided under section 81-1848.

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29-2219. Municipal court; probation; conditions; modifications; violation; procedure; powers of court. (1) A municipal court may suspend sentence, place a defendant on probation and determine the conditions and period of probation, which period shall not exceed, in the case of any defendant convicted of an offense less than a felony, two years for the first offense and five years for a second or subsequent offense.

(2) Except as provided in subsection (5) of this section, the conditions of probation, as referred to in subsection (1) of this section, shall be such as the court shall in its discretion prescribe. Such probationary conditions may include, among other conditions, any or several of the following: That the probationer shall: (a) Indulge in no unlawful, disorderly, injurious, or vicious habits; (b) avoid places or persons of disreputable or harmful character; (c) report to the probation officer as directed by the court or probation officer; (d) permit the probation officer to visit him or her in a reasonable manner at his or her place of abode or elsewhere; (e) answer any reasonable inquiries on the part of the probation officer concerning his or her conduct or condition; (f) work faithfully at suitable employment; (g) remain or reside within a specified place or locality; (h) abstain from the use of alcoholic beverages if the use of the same contributed to his or her offense; (i) pay in one or several sums a fine imposed at the time of being placed on probation; (j) make reparation or restitution to the aggrieved parties for actual damage or losses caused by his or her offense; (k) support his or her spouse or children; and (l) be confined periodically in the city or county jail or return to custody after specified hours, not to exceed thirty days.

* * *

29-2710. Witness fees; criminal cases in district court; by whom paid. The fees of all witnesses in criminal cases in the district court shall be paid by the county where the indictment is found.

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33-139. Witnesses; district, county, municipal court; Small Claims Court; grand jury; fees; mileage. Witnesses before the district court and the county or municipal court, except the Small Claims Court, and the grand jury shall receive twenty dollars, and witnesses before the Small Claims Court shall receive eight dollars, for each day actually employed in attendance on the court or grand jury, and if the said witness shall reside more than one mile from the courthouse or place where the court is held, he or she shall receive mileage at the rate provided in section 84-306.03 for state employees for each mile necessarily traveled.

* * *

28-919. Tampering with witnesses, informants, or jurors; penalty. (1) A person commits an offense if, believing that an official proceeding or investigation of a criminal matter is pending or about to be instituted, he attempts to induce or otherwise cause a witness, informant, or juror to:

- (a) Testify or inform falsely; or
- (b) Withhold any testimony, information, document, or thing; or
- (c) Elude legal process summoning him to testify or supply evidence; or
- (d) Absent himself from any proceeding or investigation to which he has been legally summoned.

(2) Tampering with witnesses, informants, and jurors is a Class IV felony.

29-2261. Offender convicted of felony; criminal records to probation officers; investigation contents; privileged; transmitted to Department of Correctional Services. (1) Unless it is impractical to do so, when an offender has been convicted of a felony, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation and personal habits, and any

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other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and adult and correctional institutions shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

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ARTICLE 12 COUNTY ATTORNEY

Section.

23-1201. County attorney; duties; services performed at request of Attorney General; additional compensation; reports.

23-1201. County attorney; duties; services performed at request of Attorney General; additional compensation; reports. (1) Except as provided in section 29-3602, it shall be the duty of the county attorney, when in possession of sufficient evidence to warrant the belief that a person is guilty and can be convicted of a felony or misdemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of the county and prosecute the appropriate criminal proceeding on behalf of the state and county. Prior to reaching a plea agreement with defense counsel, the county attorney shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement.

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29-119. Plea agreements; terms, defined. For purposes of sections 23-1201, 29-119, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement shall mean that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, shall receive less than the maximum penalty permitted by law; and

(2) Victim shall mean a person who, as a result of a homicide, as defined in sections 28-302 to 28-306, a first degree sexual assault, as defined in section 28-319, a first degree assault, as defined in section 28-308, or a robbery, as defined in section 28-324, has had a personal confrontation with the offender and shall also include a person who has suffered serious bodily injury as defined in subdivision (20) of section 28-109 as a result of a motor vehicle accident when the driver was charged with a Class W misdemeanor as provided in section 39-669.07 or 39-669.08 or with violation of a city or village ordinance enacted in conformance with either of such sections. In the case of a homicide, victim shall mean at least one family representative.

29-120. Plea agreement; prosecuting attorney; duties. Prior to reaching a plea agreement with defense counsel, a prosecuting attorney, prosecuting a violation of a city or village ordinance enacted in conformance with either section 39-669.07 or 39-669.08, shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement.

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ARTICLE 9

PROTECTION FROM DOMESTIC ABUSE ACT

Section.

42-901. Act, how cited.

42-902. Legislative intent.

42-903. Terms, defined.

42-904. Department; programs and services; establish.

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- 42-905. Comprehensive support services; enumerated.
- 42-906. Support services; to whom provided.
- 42-907. Emergency services; enumerated.
- 42-908. Department; victim; diagnostic assessment; referral; followup.
- 42-909. Department; victim; provide support services; plan of action.
- 42-910. Department; services for children; enumerated.
- 42-911. Department; victims; provide resource information.
- 42-912. Department; develop client feedback; collect statistical data.
- 42-913. Department; person who commits domestic abuse; programs and services.
- 42-914. Department; domestic violence; develop educational curriculum.
- 42-915. Department; families; develop community support systems.
- 42-916. Department; family program; prevent generational continuation of abuse.
- 42-917. Delivery of services; cooperation; coordination of programs.
- 42-918. Contact with victims of spouse abuse and families; confidentiality; violation; penalty.
- 42-919. Programs; administered independent of welfare assistance programs.
- 42-920. Department; contract for services.
- 42-921. Department; power to accept gifts, grants, devises, and bequests; use.
- 42-922. Department; adopt rules and regulations.
- 42-923. Department; determine ability to pay for services; uniform fee schedule; reduced or waived; when.
- 42-924. Victim of domestic abuse; obtain a temporary restraining order; when; effect.
- 42-925. Temporary restraining order; notice requirements.
- 42-926. Temporary restraining order; certified copies provided.
- 42-927. Law enforcement agencies; domestic abuse; education and training programs.

42-901. Act, how cited. Sections 42-901 to 42-927 shall be known and may be cited as the Protection From Domestic Abuse Act.

Source: Laws 1978, LB 623, § 1.
Operative date July 1, 1978.

42-902. Legislative intent. The Legislature hereby finds and declares that there is a present and growing need to develop services which will lessen and reduce the trauma of domestic abuse. It is the intent of sections 42-901 to 42-927 to provide abused family and household members necessary services including shelter, counseling, social services, and limited medical care and legal assistance.

Source: Laws 1978, LB 623, § 2.
Operative date July 1, 1978.

42-903. Terms, defined. As used in sections 42-901 to 42-927, unless the context otherwise requires:

(1) Abuse shall mean the occurrence of one or more of the following acts between spouses, persons living as spouses, or adult members of the same household:

(a) Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon; or

(b) Placing, by physical menace, another in fear of imminent serious bodily injury;

(2) Department shall mean the Department of Public Welfare;

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(3) Family shall mean spouses, persons living as spouses, and children;

(4) Household members shall mean persons related to a person subjected to domestic abuse by blood or marriage; and

(5) Law enforcement agency shall mean the police department or town marshal in incorporated municipalities and the office of the sheriff in unincorporated areas.

Source: Laws 1978, LB 623, § 3.
Operative date July 1, 1978.

42-904. Department; programs and services; establish. The department shall establish and maintain comprehensive support services to aid victims of domestic abuse and to provide prevention and treatment programs to aid victims of domestic abuse, their families, and abusers.

Source: Laws 1978, LB 623, § 4.
Operative date July 1, 1978.

42-905. Comprehensive support services; enumerated. The comprehensive support services shall include but not be limited to:

(1) Emergency services for victims of abuse and their families;
(2) Support programs that meet specific needs of victims of abuse and their families;

(3) Education, counseling, and supportive programs for the abuser; and

(4) Programs to aid in the prevention and elimination of domestic violence which shall include education and public awareness.

Source: Laws 1978, LB 623, § 5.
Operative date July 1, 1978.

42-906. Support services; to whom provided. The department shall provide the support services as provided in section 42-905 to any person who seeks such services.

Source: Laws 1978, LB 623, § 6.
Operative date July 1, 1978.

42-907. Emergency services; enumerated. The department shall provide emergency services which shall consist of up to seventy-two hours of crisis intervention services including:

(1) Constant access and intake to services;
(2) Immediate transportation from a victim's home or other location to a hospital or a place of safety;

(3) Immediate medical services or first aid;
(4) Emergency legal counseling and referral;

(5) Crisis counseling to provide support and assurance of safety;
(6) Emergency financial aid; and

(7) Safe living environments that will provide a supportive, non-threatening shelter to victims, their families, and household members.

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42-908. Department; victim; diagnostic assessment; referral; followup. The department shall, as soon as possible after initial contact with the victim, determine through diagnostic assessment which programs are needed and desired by the victim and family members. The department shall make appropriate referral and conduct appropriate followup. The department shall, to the extent possible, use private sources to provide the support services.

Source: Laws 1978, LB 623, § 8.
Operative date July 1, 1978.

42-909. Department; victim; provide support services; plan of action. The department shall, in addition to the emergency services, provide support services as needed to a victim of domestic abuse for up to thirty days. The support services shall be problem oriented and formulate a plan of action for the victim. Such services may include relocation, financial security, employment, advocacy, assertiveness training, substance abuse counseling, and alternatives to returning to the abuser. Also, the department shall provide services for children including day care, education, and counseling.

Source: Laws 1978, LB 623, § 9.
Operative date July 1, 1978.

42-910. Department; services for children; enumerated. The department shall provide services for children which may include:

(1) Emergency services which provide housing, food, clothing, and transportation to school;

(2) Counseling for trauma which occurs when children witness or experience family violence;

(3) Programs which provide for the appropriate educational needs of the individual child; and

(4) Services for child care in the necessary absence of the victim parent.

Source: Laws 1978, LB 623, § 10.
Operative date July 1, 1978.

42-911. Department; victims; provide resource information. The department shall provide complete resource information for victims and their families on legal, medical, financial, vocational, welfare, child care, housing, and other support services.

Source: Laws 1978, LB 623, § 11.
Operative date July 1, 1978.

42-912. Department; develop client feedback; collect statistical data. The department shall develop a means of client feedback and collect statistical data to assist it in evaluating program effectiveness.

Source: Laws 1978, LB 623, § 12.
Operative date July 1, 1978.

42-913. Department; person who commits domestic abuse; programs and services. The department shall provide such programs and serv-

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ices as it deems appropriate for the person who commits domestic abuse.

Source: Laws 1978, LB 623, § 13.
Operative date July 1, 1978.

42-914. Department; domestic violence; develop educational curriculum. The department shall develop, in cooperation with the Department of Education, a kindergarten through postsecondary educational curriculum relating to domestic violence.

Source: Laws 1978, LB 623, § 14.
Operative date July 1, 1978.

42-915. Department; families; develop community support systems. The department shall assist in developing community support systems for families to aid in the deterrence of all family crisis situations.

Source: Laws 1978, LB 623, § 15.
Operative date July 1, 1978.

42-916. Department; family program; prevent generational continuation of abuse. The department shall provide a family program, especially for children, to prevent the generational continuation of abuse within the family.

Source: Laws 1978, LB 623, § 16.
Operative date July 1, 1978.

42-917. Delivery of services; cooperation; coordination of programs. The delivery of all services provided for under sections 42-901 to 42-927 shall be done in cooperation with existing public and private, state and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the Nebraska Commission on the Status of Women, the Department of Education, the Nebraska Division on Alcoholism, the Department of Health, the Department of Public Institutions, other appropriate agencies, community service agencies and private sources.

Source: Laws 1978, LB 623, § 17.
Operative date July 1, 1978.

42-918. Contact with victims of spouse abuse and families; confidentiality; violation; penalty. Under sections 42-901 to 42-927, strict confidence shall be observed in all contact with victims of spouse abuse and their families. Any record, report, or files maintained by the department pursuant to sections 42-901 to 42-927 shall be confidential, except that the department may release statistical information, while not releasing names. Violation of this section shall be a Class V misdemeanor.

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rate and administered independent of any welfare assistance program.

Source: Laws 1978, LB 623, § 19.
Operative date July 1, 1978.

42-920. Department; contract for services. The department may construct, lease, purchase, purchase on contract, utilize vendor payment, and contract for services connected with the operation of sections 42-901 to 42-927 as needs and interest demand.

Source: Laws 1978, LB 623, § 20.
Operative date July 1, 1978.

42-921. Department; power to accept gifts, grants, devises, and bequests; use. The department may accept gifts, grants, devises, and bequests of real and personal property from public or private sources to carry out the purposes of sections 42-901 to 42-927. The department may sell, lease, exchange, invest, or expend such gifts, grants, devises, and bequests or the proceeds, rents, profits, and income therefrom according to the terms and conditions thereof.

Source: Laws 1978, LB 623, § 21.
Operative date July 1, 1978.

42-922. Department; adopt rules and regulations. The department shall adopt and promulgate such rules and regulations and perform all other acts as may be necessary or appropriate to carry out sections 42-901 to 42-927. Such rules and regulations shall include but not be limited to rules and regulations relating to fees charged, training of personnel, and administration of the program.

Source: Laws 1978, LB 623, § 22.
Operative date July 1, 1978.

42-923. Department; determine ability to pay for services; uniform fee schedule; reduced or waived; when. The department shall determine the ability of the spouses or individuals to pay for services but shall not charge more than the actual cost. The department shall prepare and adopt a uniform fee schedule to be used. The scheduled fees may be reduced or waived by authorization of the department according to the rules of the department and as may be considered necessary to further the objective of sections 42-901 to 42-927. The use of facilities and services established by sections 42-901 to 42-927 shall not be denied residents of Nebraska because of inability to pay scheduled fees. Any fees received under this section shall be deposited in the General Fund.

Source: Laws 1978, LB 623, § 23.
Operative date July 1, 1978.

42-924. Victim of domestic abuse; obtain a temporary restraining order; when; effect. Any victim of domestic abuse may file an application and affidavit in support of such abuse with any judge of a district court or a conciliation court. Upon the filing of such an application and affidavit in support thereof, the judge or court may issue a temporary

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restraining order without bond enjoining the adverse party from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the applicant; or (3) entering the family dwelling or the dwelling of the applicant upon a showing that physical or emotional harm would otherwise result.

Source: Laws 1978, LB 623, § 24.
Operative date July 1, 1978.

42-925. Temporary restraining order; notice requirements. Any order issued under section 42-924 may be issued ex parte, if the circumstances of the case demand it, or the court or judge may cause immediate notice of the application to be given to the adverse party, that he or she may show cause, not less than five days after service upon him or her, why such order should not be entered, but no temporary restraining order shall be granted without notice to the adverse party unless it reasonably appears from the specific facts shown by affidavit of the applicant that irreparable harm, loss, or damage will result before the matter can be heard on notice. If such order is issued without notice to the adverse party, the court shall cause immediate notice of the application to be given the adverse party, that he or she may show cause, not less than five days after service upon him or her, why such order should not remain in effect.

Source: Laws 1978, LB 623, § 25.
Operative date July 1, 1978.

42-926. Temporary restraining order; certified copies provided. Upon the issuance of any temporary restraining order under section 42-925, the clerk of the court shall provide the applicant, without charge, with two certified copies of such order.

Source: Laws 1978, LB 623, § 26.
Operative date July 1, 1978.

42-927. Law enforcement agencies; domestic abuse; education and training programs. All law enforcement agencies in the state shall provide officers employed by them with an education and training program designed to inform the officers of the problems of domestic abuse, procedures to deal with such problems, the provisions of sections 42-901 to 42-927, and the services and facilities available to abused family and household members.

Category		Citation
1.	Victim Compensation Program	217.010 et seq.
1.1	Responsible Agency	217.030
1.2	Eligible Claimants	217.070; 217.220
1.3	Losses Covered	217.200(1)
1.4	Minimum and Maximum Award	217.200(3)
1.5	Required to Show Financial Need	217.220(3)
1.6	Required to Report Crime - Time Limit	217.210(1)
1.7	Filing of Claim - Time Limit	217.210(1)
1.8	Emergency Award	217.095, 217.200(2)
1.9	Funding	176.189(5); 217.260
2.	Restitution	
2.1	Sentencing Option	213.126
2.2	Mandatory Condition of Probation	176.189(1) et seq.
2.3	Mandatory Condition of Parole	
2.4	Mandatory Sentence	
2.5	Administration/Enforcement	209.4821 et seq. (restitution centers)
3.	Escrow and Forfeiture of Offender Profits	217.265
4.	Witness Fees	50.225
5.	Victim's Bill of Rights	See, 178.569 et seq. (protection of victims and witnesses)
6.	Protection from Intimidation	178.5692 (protective services provided by law enforcement)
6.1	Crime Defined	190.230; 199.235; 199.240; 199.242; 199.305
6.2	Protective Orders	33.015
7.	Victim Notification	
7.1	of Compensation Program	
7.2	of Witness Fees	178.5696(3)
7.3	of Final Disposition	178.5698(1)
7.4	of Plea Agreement	
7.5	of Cancelled Proceeding	178.5694(2)
7.6	of Right to Participate in Sentencing Hearing	
7.7	of Parole Hearing	213.040(2) (of application for parole); 213.010(3); 213.095 (of pardon), 213.130(3)
7.8	of Release of Offender	178.5698(2); 213.095
7.9	of Escape of Offender	
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	176.145(3)
8.2	Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	213.130(3)
8.5 Testimony at Parole Hearing	213.130(3)
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	178.5694(1)
9.2 Criminal Sanction for Penalizing Employee-Witness	50.070
10. Return of Seized Property	52.385 et seq.; 178.5696(2)
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	171.204; 178.571
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	193.167
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	200.5099
12.3 Abuse, Neglect, Exploitation - Reporting	200.5091, 200.5093
12.4 Abuse, Neglect, Exploitation - Protective Services	200.5092(5), 200.5098(2)
13. Sexual Assault Victims	217.280 et seq.
13.1 Payment for Medical Services	217.300
13.2 Special Programs	217.310 et seq. (medical, psychological care)
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	33.020
14.2 Domestic Violence Shelters	217.400, 217.420
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	217.460 (reports of domestic violence)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	200.5095 (reports of abuse of elderly)
15.4 Sexual Assault Counselor Privilege	

NEVADA

Nevada Revised Statutes

COMPENSATION FOR CERTAIN VICTIMS OF
CRIMINAL ACTS

217.010 Policy of state. It is the policy of this state to provide assistance to persons who are victims of violent crimes or the dependents of victims of violent crimes.
(Added to NRS by 1969, 1151; A 1975, 1292, 1788; 1981, 1666)

217.020 Definitions. As used in NRS 217.010 to 217.270, inclusive, unless the context otherwise requires, the words and terms defined in NRS 217.030 to 217.070, inclusive, have the meanings ascribed to them in those sections.
(Added to NRS by 1969, 1151; A 1975, 1292, 1788; 1981, 1666; 1983, 889)

217.030 "Board" defined. "Board" means the state board of examiners.
(Added to NRS by 1969, 1151)

217.035 "Crime" defined. "Crime" means an act or omission committed within this state which is forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline.
(Added to NRS by 1975, 1788)

217.040 "Dependents" defined. "Dependents" means the relatives of a deceased or injured victim who were wholly or partially dependent upon his income at the time of his death or injury.
(Added to NRS by 1969, 1151; A 1981, 1666)

217.045 "Hearing officer" defined. "Hearing officer" means a hearing officer of the hearings division of the department of administration.
(Added to NRS by 1981, 1665)

217.050 "Personal injury" defined. "Personal injury" means:
1. Actual bodily harm or threat of bodily harm which results in a need for medical treatment; or
2. In the case of a minor who was involved in the production of pornography in violation of NRS 200.710, 200.720 or 200.730, any harm which results in a need for medical treatment or any psychological or psychiatric counseling, or both.
(Added to NRS by 1969, 1151; A 1981, 1666; 1983, 818)

217.060 "Relative" defined. "Relative" of any person includes:
1. A spouse, parent, grandparent or stepparent;
2. A natural born, step or adopted child;
3. A grandchild, brother, sister, half brother or half sister; or
4. A parent of a spouse.
(Added to NRS by 1969, 1151; A 1981, 1667)

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217.070 "Victim" defined. "Victim" means:

1. A person who is physically injured or killed as the direct result of a criminal act; or
2. A minor who was involved in the production of pornography in violation of NRS 200.710, 200.720 or 200.730.

(Added to NRS by 1969, 1151; A 1975, 1789; 1981, 1667; 1983, 818)

217.080 Expenses of board members. Members of the board are not entitled to compensation, but are entitled to subsistence allowances and travel expenses pursuant to the provisions of NRS 281.160 while engaged in the performance of official duties under NRS 217.010 to 217.270, inclusive.

(Added to NRS by 1969, 1151; A 1975, 1292; 1981, 1667)

217.090 Compensation officers: Appointment; qualifications; wages and expenses; duties; restriction on attorneys.

1. The board may appoint one or more compensation officers, who must have had responsible and successful administrative experience. Each compensation officer is entitled to receive a wage of not more than \$50 as determined by contract for each hour spent in performing his duties, but not more than \$250 per case, and is entitled to a subsistence allowance and reimbursement for travel expenses as provided for state officers and employees.

2. A compensation officer shall:

(a) Conduct an investigation to determine the eligibility of the applicant for aid, including but not limited to:

(1) Compiling bills from physicians who have treated the victim for his injury;

(2) Obtaining from the victim a signed affidavit indicating the amount of any wages allegedly lost because of the injury;

(3) Reviewing reports of peace officers and statements of witnesses; and

(4) Determining the availability to the applicant of any insurance benefits or other source from which the applicant is eligible to be compensated on account of his injuries or the death of the victim.

(b) After completing his investigation, make a report and recommendation to the hearing officer.

3. If an attorney admitted to practice law in this state has been appointed as a compensation officer, he shall not represent or otherwise assist a claimant for compensation with any matter relating to the circumstances which have resulted or may result, directly or indirectly, in a claim.

(Added to NRS by 1969, 1151; A 1975, 1292, 1789; 1981, 1667; 1983, 1957)

217.095 Preliminary award: Application; requirements; use; investigation; deduction from subsequent award.

1. A person is eligible for a preliminary award under this section if his income, including any benefits or pensions, is not more than \$750 per month. The board may require an applicant to submit proof of his monthly income.

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2. A person may request a preliminary award in his application to the board for compensation. A preliminary award may be made to:

(a) Replace money lost as a direct consequence of criminal action if the applicant needs to replace the lost money to pay his expenses for the next 30 days. An award pursuant to this paragraph must not exceed \$400.

(b) Pay for the replacement or repair of lost or damaged property which is essential to the physical or psychological health of the applicant. An award pursuant to this paragraph must not exceed \$1,000.

A preliminary award must be granted if the applicant submits sufficient evidence to establish a prima facie case for granting compensation pursuant to NRS 217.010 to 217.270, inclusive, and to satisfy the requirements of this section.

3. The board shall refer the application for a preliminary award and any supporting documents to a compensation officer within 2 working days after the application is received. The compensation officer shall investigate the application and:

(a) Grant a preliminary award; or

(b) Submit a report to a hearing officer recommending that the application be denied,

within 5 days after receiving the application. The hearing officer shall render a decision on any report submitted to him within 3 days after its receipt.

4. The amount of any preliminary award must be deducted from any award subsequently granted.

(Added to NRS by 1983, 888)

217.100 Application for compensation; medical reports.

1. Any person eligible for compensation under the provisions of NRS 217.010 to 217.270, inclusive, may apply to the board for such compensation. Where the person entitled to make application is:

(a) A minor, the application may be made on his behalf by a parent or guardian.

(b) Mentally incompetent, the application may be made on his behalf by a parent, guardian or other person authorized to administer his estate.

2. The applicant must submit with his application the reports, if reasonably available, from all physicians who, at the time of or subsequent to the victim's injury or death, treated or examined the victim in relation to the injury for which compensation is claimed.

(Added to NRS by 1969, 1151; A 1975, 1292; 1977, 958; 1981, 1668)

217.110 Investigation, report and recommendation of compensation officer.

1. Upon receipt of an application for compensation, the board shall refer the application, together with the reports of the treating or examining physicians, to a compensation officer within 5 days.

2. The compensation officer shall conduct his investigation and submit his report and recommendation to a hearing officer within 60 days after his receipt of the application. If in conducting his investigation the compensation officer believes that reports on the previous medical history of the victim, or an examination of the victim and a report of that examination, or a report on the cause of death of the victim by an impartial medical expert would aid him in making his recommendation, the compensation officer may order the reports.

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3. Within 15 days after the hearing officer receives the report and recommendation of the compensation officer, the hearing officer shall render a decision in the case, including any order directing the payment of compensation, or give notice to the applicant that a hearing will be held. The hearing must be held within 20 days after the notice is given.
(Added to NRS by 1969, 1152; A 1975, 1789; 1981, 1668)

217.113 Hearings: Subpenas; evidence; records; decision of hearing officer.

1. The hearing officer may hold the hearing at a time and place, and take such testimony, as he deems advisable.

2. The hearing officer may issue subpoenas to compel the attendance of witnesses and the production of books and papers at the hearing.

3. If any witness refuses to attend or testify or produce any books and papers as required by the subpoena, the hearing officer may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the hearing officer pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the hearing officer who is named in the subpoena, or has refused to answer questions propounded to him,

and asking for an order of the court compelling the witness to attend and testify or produce the books and papers before the hearing officer.

4. Upon such petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced the books or papers before the hearing officer. A certified copy of the order must be served upon the witness.

5. If it appears to the court that the subpoena was regularly issued by the hearing officer, the court shall enter an order that the witness appear before the hearing officer at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order the witness must be dealt with as for contempt of court.

6. The applicant and any other person having a substantial interest in the outcome of the hearing may appear and be heard, produce evidence and cross-examine witnesses in person or by his attorney. The hearing officer also may hear other persons who may have relevant evidence to submit.

7. Any statement, document, information or matter may be received in evidence if, in the opinion of the hearing officer, it contributes to a determination of the claim, whether or not such evidence would be admissible in a court of law.

8. The hearing officer shall create a record of each hearing. The record may be in the form of a sound recording.

9. The hearing officer shall render his decision in the case, including any order directing the payment of compensation, within 10 days after the hearing.

(Added to NRS by 1981, 1665)

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217.115 Waiver of time limitations. The time limitations in NRS 217.110 and 217.113 may be waived by the applicant or, upon good cause shown, by the hearing officer.
(Added to NRS by 1981, 1666)

217.117 Appeals to board.

1. The applicant may, within 15 days after the hearing officer renders his decision, appeal the decision to the board. The board shall consider the appeal on the record at its next scheduled meeting if the appeal and the record are received by the board at least 5 days before the meeting. Within 10 days after the meeting the board shall render its decision in the case or give notice to the applicant that a hearing will be held. The hearing must be held within 30 days after the notice is given and the board shall render its decision in the case within 10 days after the hearing.

2. The board may on its own motion, within 15 days after the hearing officer renders his decision, modify or reverse the decision.

3. The decision of the board is final and not subject to judicial review.
(Added to NRS by 1981, 1666)

217.120 Proof of conviction conclusive evidence of commission of offense. If any person has been convicted of any offense with respect to an act on which a claim under NRS 217.010 to 217.270, inclusive, is based, proof of that conviction is conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

(Added to NRS by 1969, 1152; A 1975, 1293)

217.130 Rules and regulations. In the performance of its functions, the board may adopt, rescind and amend rules and regulations prescribing the procedures to be followed in the filing of applications and proceedings under NRS 217.010 to 217.270, inclusive, and for such other matters as the board deems appropriate.

(Added to NRS by 1969, 1152; A 1975, 1293)

217.140 Attorney's fees.

1. The hearing officer may, as part of any order entered pursuant to the provisions of NRS 217.010 to 217.270, inclusive, allow reasonable attorney's fees, but these fees may not exceed 10 percent of the award.

2. It is unlawful for any attorney to ask for, contract for or receive any larger sum than the amount so allowed.

(Added to NRS by 1969, 1152; A 1975, 1293; 1981, 1669)

217.150 Standards for compensation. The board shall so far as practicable, formulate standards for the uniform application of NRS 217.010 to 217.270, inclusive, by the hearing officers in the determination of the amount of any compensation payable under the provisions of NRS 217.010 to 217.270, inclusive. The standards must take into consideration rates and amounts of compensation payable for injuries and death under other laws of this state and of the United States.

(Added to NRS by 1969, 1152; A 1975, 1293; 1981, 1669)

217.160 Awarding compensation. The hearing officer may order the payment of compensation:

1. To or for the benefit of the victim;

2. If the victim has suffered personal injury, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury; or

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3. If the victim dies, to or for the benefit of any one or more of the dependents of the victim.

(Added to NRS by 1969, 1153; A 1981, 1670)

217.170 Suspension of proceedings. Upon application made by an appropriate prosecuting authority, the hearing officer or the board may suspend any proceedings being conducted pursuant to NRS 217.010 to 217.270, inclusive, for such period as he or it deems appropriate on the ground that a prosecution for an offense arising from the act or omission to act on which the claim for compensation is based has been commenced or is imminent.

(Added to NRS by 1969, 1153; A 1975, 1293; 1981, 1670)

217.180 Order for compensation: Considerations.

1. In determining whether to make an order for compensation, the hearing officer shall consider the provocation, consent or any other behavior of the victim which directly or indirectly contributed to his injury or death, the prior case or social history, if any, of the victim, need of the victim or his dependents for financial aid and other relevant matters.

2. If the claimant has received or is likely to receive any amount on account of his injuries or the death of another from:

(a) The person who committed the crime which caused the victim's injury or from anyone paying on behalf of the offender;

(b) Insurance;

(c) The employer of the victim; or

(d) Any other private or public source or program of assistance, he shall report the amounts received or which he is likely to receive to the compensation officer and the hearing officer shall reduce the award of compensation by that amount. Any of those sources which is obligated to pay any amount after the award of compensation shall pay the board any amount of compensation which has been paid to the claimant and pay the remainder of the amount due to the claimant.

3. An order for compensation may be made whether or not any person is prosecuted or convicted of any offense arising from the act on which the claim for compensation is based.

(Added to NRS by 1969, 1153; A 1981, 1670)

217.200 Nature of compensation; certificate for meritorious citizen's service; emergency awards; limitations.

1. The hearing officer may order the payment of compensation and the award of a governor's certificate for meritorious citizen's service to a victim as defined in NRS 217.070 for:

(a) Medical expenses, expenses for psychological counseling and nonmedical remedial care and treatment rendered in accordance with a religious method of healing, actually and reasonably incurred as a result of the personal injury or death of the victim;

(b) Loss of earnings or support not to exceed \$200 per week and reasonably incurred as a result of the total or partial incapacity of the victim;

(c) Pecuniary loss to the dependents of a deceased victim;

(d) Funeral expenses, not in excess of \$1,000, which are actually and reasonably incurred as a result of the death of the victim; and

(e) Any other loss which results from the personal injury or death of the victim and which the hearing officer determines to be reasonable.

2. The hearing officer may order that an emergency award be made to the victim to avoid financial hardship. The hearing officer may order that the amount of the emergency award be deducted from the final award, or if the emergency award exceeds the amount finally awarded

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to the victim, that the victim repay the difference between the two awards. An award of compensation including any emergency award ordered to be paid in advance to assist the victim, may be made subject to such terms and conditions as the hearing officer considers necessary or advisable with respect to payment, disposition, allotment or apportionment of the award.

3. No award may be made for less than \$100 or for more than \$15,000 except in the case of a minor who was involved in the production of pornography.

(Added to NRS by 1969, 1153; A 1975, 1790; 1981, 1670; 1983, 818, 1958)

217.210 Time limitations on awarding compensation.

1. No order for the payment of compensation may be made unless the application is made within 1 year after the date of the personal injury or death on which the claim is based, and the personal injury or death was the result of an incident or offense which was reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within 5 days of the time when a report could reasonably have been made.

2. A claim with respect to which information has been requested from a claimant by the compensation officer or hearing officer remains open for 1 year after the request is made. If a claimant does not submit the requested information within 1 year after the request is made, the claim must be denied.

(Added to NRS by 1969, 1153; A 1981, 1671; 1983, 1958)

217.220 When compensation not to be awarded.

1. Except as otherwise provided in subsection 2, compensation must not be awarded if the victim:

(a) Is a relative of the offender;

(b) Was, at the time of the personal injury or death of the victim, living with the offender in a continuing relationship;

(c) Violated a penal law of this state, which caused or contributed to his injuries or death;

(d) Was injured or killed as a result of the operation of a motor vehicle, boat or airplane unless such vehicle, boat or airplane was used as a weapon in a deliberate attempt to harm the victim;

(e) Was not a resident of the State of Nevada at the time the incident upon which the claim is based occurred; or

(f) Was a coconspirator, codefendant or accomplice of the offender whose crime caused the victim's injuries.

2. The provisions of subsection 1 do not apply to a minor who was involved in the production of pornography in violation of NRS 200.710, 200.720 or 200.730.

3. The hearing officer may deny an award if he determines that the claimant will not suffer serious financial hardship.

(Added to NRS by 1969, 1153; A 1975, 1294, 1790; 1981, 1671; 1983, 818)

217.240 Recovery from offender. When a claimant accepts an award, the State of Nevada is subrogated in the amount of the award to any right of action had by the claimant for damages caused by the crime.

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217.250 Reports. The board shall prepare and transmit biennially to the legislature a report of its activities, including:

1. The amount of compensation awarded;
2. The number of claimants;
3. The number of claimants who were denied compensation; and
4. The average length of time taken to award compensation, from the date of receipt of the application to the date of the payment of compensation.

(Added to NRS by 1969, 1154; A 1971, 156; 1975, 1294; 1981, 1672)

217.260 Fund for the compensation of victims of crime: Creation; use; reversion.

1. Money for payment of compensation as ordered by the board and for payment of salaries and other expenses incurred by the hearings division of the department of administration pursuant to NRS 217.010 to 217.270, inclusive, must be paid from the fund for the compensation of victims of crime, which is hereby created. Money in the fund must be disbursed on the order of the board in the same manner as other claims against the state are paid.

2. Money deposited in the fund which is recovered from a forfeiture of assets pursuant to NRS 200.760 must be used for the counseling and medical treatment of minors who are involved in the production of pornography in violation of NRS 200.710, 200.720 or 200.730.

3. If on June 30 of any year the fund contains more than \$350,000, excluding any money deposited which is recovered from a forfeiture of assets pursuant to NRS 200.760, the state treasurer shall distribute the excess to the counties in the same proportion that the money which each county paid to the fund bears to the amount paid to the fund by all counties. The distribution must be made on or before July 31, and the money must be deposited in the general fund of each county.

217.265 One-half of money received by offender based on his notoriety must be paid into fund for the compensation of victims of crimes. One-half of the value of all money and other property which an offender receives for books, serialization rights, rights for movies and television programs and other payments which he receives based on his notoriety as an offender must be paid into the fund for the compensation of victims of crimes. The fund has a lien against the property of the offender for the amount due it pursuant to this section.

(Added to NRS by 1981, 1666)

217.270 Unlawful acts; penalty. Any person who knowingly obtains or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement or representation or other fraudulent device, assistance to which he is not entitled, or assistance greater than that to which he is entitled pursuant to NRS 217.010 to 217.260, inclusive, is guilty of a gross misdemeanor.

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176.189 Restitution as condition of probation or suspension of sentence.

1. The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable. Such an order may require payment for medical or psychological treatment of any person whom the defendant has injured.

2. All money received by the department for restitution for:

(a) One victim may; and

(b) More than one victim must,

be deposited with the state treasurer for credit to the restitution trust fund. All payments from the fund must be paid as other claims against the state are paid.

3. If restitution is not required, the court shall set forth the circumstances upon which it finds restitution impracticable in its order of probation or suspension of sentence.

4. Failure to comply with the terms of an order for restitution is a violation of a condition of probation or suspension of sentence unless the defendant's failure has been caused by economic hardship resulting in his inability to pay the amount due. The defendant is entitled to a hearing to show the existence of such a hardship.

5. If, within 3 years after the defendant has been discharged from probation, the department of parole and probation has not located the person to whom the restitution was ordered, the money paid by the defendant must be deposited with the state treasurer for credit to the fund for the compensation of victims of crime.

(Added to NRS by 1975, 83; A 1977, 399; 1981, 1341; 1983, 245, 383)

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209.4821 Restitution to victims: Definitions. As used in NRS 209.4821 to 209.4843, inclusive, unless the context otherwise requires, the words and terms defined in NRS 209.4823 and 209.4825 have the meanings ascribed to them in those sections.

(Added to NRS by 1981, 615)

209.4823 "Dependent" defined. "Dependent" means a person who was wholly or partially dependent upon the income of a deceased person at the time of his death. The term includes the child of the deceased person born after his death.

(Added to NRS by 1981, 615)

209.4825 "Victim" defined. "Victim" means:

1. A natural person, governmental agency, unincorporated association or business organization which is physically injured or otherwise suffers any damages as a direct or indirect result of a criminal act for which the offender is incarcerated.

2. The spouse, children and dependents of a natural person who is killed or is injured or suffers damages as described in subsection 1.

(Added to NRS by 1981, 615; A 1983, 449)

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209.4827 Restitution to victims: Centers to house offenders. The director may:

1. With the approval of the board, establish centers to house offenders within a community so they may work to earn wages with which to make restitution to the victims of their crimes.

2. If space is available, assign to the center:

(a) An offender participating in a work or educational release program.

(b) An offender who has been paroled if such a request is made by the department of parole and probation.

(Added to NRS by 1981, 615; A 1983, 323)

209.4829 Restitution to victims: Assignment of offender to center. The director may assign an offender to a center for the purpose of making restitution only if:

1. The offender requests the assignment;

2. The director determines that the offender is suitable for the assignment;

3. A victim files a claim for restitution from the offender which the director determines is valid or the offender voluntarily offers to make restitution to a victim of his crime and the director determines that restitution can be made to that victim; and

4. The offender makes an assignment to the department of his wages earned while at the center.

(Added to NRS by 1981, 615)

209.4831 Restitution to victims: Deductions from wages of offender for living expenses. The director shall determine a fixed amount to be deducted from the wages of each parolee or other offender assigned to a center to offset in part the cost of providing the offender with housing, meals and medical and dental services at the center.

(Added to NRS by 1981, 616; A 1983, 385)

209.4833 Restitution to victims: Claims for restitution; voluntary restitution.

1. Any victim may file a claim for restitution with the director at any time while the offender is incarcerated. No action may be taken upon the claim until:

(a) The offender has requested assignment to a center of the department; and

(b) The director has determined that the offender is suitable for that assignment.

2. If the victim is a minor, the claim may be made on his behalf by a parent or guardian. If the victim is mentally incompetent, the claim may be made on his behalf by a parent, guardian or other person authorized to administer his estate.

3. After an offender has requested an assignment to a center and is determined to be suitable for assignment, the director shall determine:

(a) The validity of all claims for restitution from the offender; or

(b) If no claim has been filed and the offender has voluntarily offered to make restitution to a victim, whether restitution can be made to that victim.

209.4835 Restitution to victims: Proof of conviction conclusive evidence of commission of offense. If an offender has been convicted of a criminal act with respect to which a claim for restitution is based, proof of that conviction is conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard to the conviction is pending.

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209.4837 Restitution to victims: Agreement for assignment and distribution of wages of offender; schedule of restitution. Once the director determines that a claim for restitution is valid or, absent a claim, that restitution voluntarily offered by the offender can be made, the director shall attempt to negotiate and enter into an agreement with the offender which provides for an assignment to the department of all wages which the offender earns while at the center:

1. To make restitution payments to the victims of any crime for which the offender is incarcerated;

2. To reimburse the department in part for its costs in providing the offender housing, meals and medical and dental services at the center; and

3. For his own account to the prisoners' personal property fund.

The agreement must contain a schedule of restitution payments to be made to all victims of crimes for which the offender is incarcerated who have filed valid claims with the director or, absent any claims, to whom the director determines restitution voluntarily offered by the offender can be made. The payments may be made subject to such terms as the director deems advisable.

(Added to NRS by 1981, 616)

209.4839 Restitution to victims: Amount of restitution. In determining the total restitution which may fairly be awarded to a victim, the director shall, to the extent possible, consider:

1. The following which were actually and reasonably incurred as a direct or indirect result of the crime:

(a) Medical expenses, including expenses for psychiatric treatment.

(b) Expenses for any nonmedical remedial care or treatment, including psychological treatment.

(c) Funeral expenses.

(d) Loss of earnings or financial support.

(e) Damage to or loss of real or personal property.

(f) Any other economic loss suffered by the victim.

2. Loss of companionship and the pain and suffering of the victim.

3. Any payments the claimant has already received or is legally entitled to receive as a direct result of the injury, loss or death upon which his claim is based.

4. Any conduct of the injured victim or the deceased which contributed directly or indirectly to his injury, loss or death.

(Added to NRS by 1981, 616; A 1983, 449)

209.4841 Restitution to victims: Distribution of earnings of offender.

1. The director shall arrange for all earnings of an offender assigned to a center to be paid directly from the employer of the offender to the department.

2. The department shall:

(a) From the wages of an offender who has been paroled:

(1) Deduct the amount for housing, meals and medical and dental services determined under NRS 209.4831; and

(2) Distribute any remainder to the offender.

(b) From the wages of any other offender:

(1) Deduct the amount for housing, meals and medical and dental services determined under NRS 209.4831;

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(2) Distribute any amount required by the schedule of restitution payments; and

(3) Deposit any remainder to the offender's account in the prisoners' personal property fund, in that order or priority.

(Added to NRS by 1981, 617; A 1983, 385)

209.4843 Restitution to victims: Termination of payments of restitution. Payments of restitution must terminate:

1. If the offender is reassigned to another institution of the department which is not a center;
2. When the offender is released from prison, except that the payments may be continued as a condition of parole; or
3. When the victim has received the full amount to which he is entitled under the agreement, whichever occurs first.

(Added to NRS by 1981, 617)

209.492 Status while participating in work, educational release programs or other assignments. Any offender participating in work or educational release programs or in any other classification assignment under the provisions of this chapter, other than parole:

1. Continues to be in the legal custody of the director during the offender's absence from an institution.
2. Is considered within the confines of the institution for these purposes, and is subject to all provisions of law pertaining to his confinement, regardless of the location of his assignment.

* * *

213.126 Restitution may be required as condition of parole; restitution trust fund.

1. The board may impose as a condition of parole, in appropriate circumstances, a requirement that the parolee make restitution to the person or persons named in the statement of parole conditions, at the times and in the amounts specified in the statement.

2. All money received by the department for restitution for:

(a) One victim may; and

(b) More than one victim must,

be deposited in the state treasury for credit to the restitution trust fund which is hereby created. All payments from the fund must be paid as other claims against the state are paid.

3. Failure to comply with a restitution requirement imposed by the board is a violation of a condition of parole unless the parolee's failure was caused by economic hardship resulting in his inability to pay the amount due. The defendant is entitled to a hearing to show the existence of that hardship.

4. If, within 3 years after the parolee is discharged from parole, the department has not located the person to whom the restitution was ordered, the money paid to the department by the parolee must be deposited in the fund for the compensation of victims of crime.

(Added to NRS by 1975, 84; A 1979, 100; 1981, 1341)

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FEES OF WITNESSES

50.225 Fees, expenses of witnesses. Witnesses required to attend in the courts of this state are entitled to receive the following compensation:

1. For attending in any criminal case, or civil suit or proceeding before a court of record, master, commissioner, justice of the peace, or before the grand jury, in obedience to a subpoena, \$25 for each day's attendance, including Sundays and holidays.

2. Mileage must be paid at the rate of 19 cents a mile for each mile necessarily and actually traveled from and returning to the place of residence by the shortest and most practical route, but:

(a) A person is not obliged to testify in a civil action or proceeding unless his mileage and at least 1 day's fees have been paid him; and

(b) Any person in attendance at the trial and sworn as a witness is entitled to witness fees irrespective of service of subpoena.

3. Witness fees in civil cases must be taxed as disbursement costs against the defeated party upon proof by affidavit that they have been actually incurred. Costs may not be allowed for more than two witnesses to the same fact or series of facts, nor may a party plaintiff or defendant be allowed any fees or mileage for attendance as a witness in his own behalf.

* * *

33.015 Injunction to restrain unlawful act against witness or victim of crime. Whenever it appears that a defendant or other person is doing, about to do, threatening to do or procuring to be done some act against a victim of a crime or a witness in violation of any provision of NRS 199.230, 199.235, 199.240 or 199.305, a court of competent jurisdiction may issue an injunction restraining the defendant or other person from the commission or continuance of that act.

* * *

178.5692 Investigation by sheriff of threats of harm; protection. If a victim of a crime or a witness is cooperating with the prosecuting attorney in a criminal case and reasonably apprehends that he may suffer threats of harm or harm arising out of that cooperation, the sheriff of the county or the chief of police of the city shall, upon the written request of the victim or witness, investigate the circumstances, take adequate measures to protect him where appropriate, and inform him of the level of protection being provided.

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199.230 Preventing or dissuading witness from testifying or producing evidence. Every person who, by persuasion, force, threat, intimidation, deception or otherwise, and with intent to obstruct the course of justice, prevents or attempts to prevent another person from appearing before any court, or officer authorized to subpoena witnesses, as a witness in any action, investigation or other official proceeding, or causes or induces another person to absent himself from such a proceeding or evade the process which requires him to appear as a witness to testify or produce a record, document or other object, shall be punished:

1. Where physical force or the immediate threat of such force is used, by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than \$50,000.

2. Where no physical force or immediate threat of such force is used, for a gross misdemeanor.

[1911 C&P § 94; RL § 6359; NCL § 10043]—(NRS A 1967, 465; 1979, 1421; 1983, 1683)

199.235 Preventing or dissuading victim of crime from attending official proceedings.

1. Every person who, by intimidating or threatening another person, prevents or dissuades a victim of a crime from attending an official proceeding on any matter relating to that crime is guilty of a gross misdemeanor.

2. As used in this section, "victim of a crime" means a person against whom a crime has been committed.

(Added to NRS by 1983, 1682)

199.240 Bribing or intimidating witness to influence testimony. Every person who:

1. Gives, offers or promises directly or indirectly any compensation, gratuity or reward to any witness or person who may be called as a witness in an official proceeding, upon an agreement or understanding that his testimony shall be thereby influenced; or

2. Uses any force, threat, intimidation or deception with intent to:

(a) Influence the testimony of any witness or person who may be called as a witness in an official proceeding;

(b) Cause or induce him to give false testimony or to withhold true testimony; or

(c) Cause or induce him to withhold a record, document or other object from the proceeding,

shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years, and may be further punished by a fine of not more than \$50,000.

[1911 C&P § 56; RL § 6321; NCL § 10005]—(NRS A 1967, 465; 1979, 1421; 1983, 1683)

199.242 Limitations on defenses to prosecution for influencing testimony of witness. It is not a defense to a prosecution under NRS 199.230, 199.235 or 199.240 to show that:

1. An official proceeding was not pending or about to be instituted; or

2. The testimony sought or the record, document or other object to have been produced would have been legally privileged or inadmissible in evidence.

(Added to NRS by 1983, 1682)

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199.305 Preventing or dissuading witness or victim from reporting crime or commencing prosecution.

1. Every person who, by intimidating or threatening another person, prevents or dissuades a victim of a crime, a person acting on his behalf or a witness from:

(a) Reporting a crime or possible crime to a:

(1) Judge;

(2) Peace officer;

(3) Parole or probation officer;

(4) Prosecuting attorney;

(5) Warden or other employee at an institution of the department of prisons; or

(6) Superintendent or other employee at a juvenile correctional institution;

(b) Commencing a criminal prosecution or a proceeding for the revocation of a parole or probation, or seeking or assisting in such a prosecution or proceeding; or

(c) Causing the arrest of a person in connection with a crime, or who hinders or delays such a victim, agent or witness in his effort to carry out any of those actions shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than \$10,000.

2. As used in this section, "victim of a crime" means a person against whom a crime has been committed.

178.5698 Notice of release of defendant and disposition of case.

1. The prosecuting attorney, sheriff or chief of police shall, upon the written request of each such victim or witness, inform him:

(a) When the defendant is released from custody at any time before or during the trial;

(b) If the defendant is so released, the amount of bail required, if any; and

(c) Of the final disposition of the criminal case in which he was directly involved.

2. If the crime was a felony and the offender is imprisoned, the warden of the prison shall, if the victim or witness so requests in writing and provides his current address, notify him at that address when the offender is released from the prison. If a current address is not provided, the warden may not be held responsible if this information is not received by the victim or witness.

(Added to NRS by 1983, 890)

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PARDON, REMISSIONS OF FINES, COMMUTATIONS OF PUNISHMENTS; STATE BOARD OF PARDONS COMMISSIONERS

213.005 Definitions. As used in NRS 213.010 to 213.100, inclusive, unless the context otherwise requires:

1. "Board" means the state board of pardons commissioners.
2. "Victim" includes:
 - (a) A person against whom a crime has been committed;
 - (b) A person who has been injured or killed as a direct result of the commission of a crime; or
 - (c) The surviving spouse, parents or children of such a person.

(Added to NRS by 1983, 1330)

213.010 State board of pardons commissioners: Members; meetings; notice of meetings to victim.

1. The state board of pardons commissioners consists of the governor, the justices of the supreme court and the attorney general.
2. Meetings of the board for the purpose of considering applications for clemency may be held semiannually or oftener, on such dates as may be fixed by the board.
3. The board shall give written notice at least 15 days before a meeting to each victim of the crimes committed by each person whose application for clemency will be considered at the meeting, if the victim so requests in writing and provides his current address. If a current address is not provided, the board may not be held responsible if the notice is not received by the victim. The victim may submit a written response to the board at any time before the meeting.

[1:149:1933; 1931 NCL § 11569]—(NRS A 1957, 738; 1973, 803; 1979, 657; 1983, 1330, 1438, 1658)

213.040 District attorneys to furnish board with statement upon receipt of notice of application for remission, commutation or pardon; notice of application to victim. All district attorneys receiving notice of an application for a pardon, or commutation of punishment, or remission of fine or forfeiture, shall transmit forthwith to:

1. The board a statement in writing of facts surrounding the commission of the offense for which the applicant is incarcerated or subject to penalty and any information affecting the merits of the application.
2. Each victim of the person applying for clemency a copy of the notice of the application, if the victim so requests in writing and provides his current address. If a current address is not provided, the district attorney may not be held responsible if a copy of the notice is not received by the victim.

[6:149:1933; 1931 NCL § 11574]—(NRS A 1957, 333; 1983, 1331)

213.095 Notice by board to victim if clemency granted. If the board remits a fine or forfeiture, commutes a sentence or grants a pardon, it shall give written notice of its action to the victim of the person granted clemency, if the victim so requests in writing and provides his current address. If a current address is not provided, the board may not be held responsible if the notice is not received by the victim.

(Added to NRS by 1983, 1330)

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176.145 Report of the presentence investigation. The report of the presentence investigation must contain:

1. Any prior criminal record of the defendant;
2. Such information about his characteristics, his financial condition, the circumstances affecting his behavior and the circumstances of the offense as may be helpful in imposing sentence, in granting probation or in the correctional treatment of the defendant;
3. Information concerning the effect that the crime committed by the defendant has had upon the victim, including but not limited to any physical or psychological harm or financial loss suffered by the victim, to the extent that such information is available from the victim or other sources, but the provisions of this subsection do not require any particular examination or testing of the victim, and the extent of any investigation or examination is solely at the discretion of the court or department and the extent of such information to be included in the report is solely at the discretion of the department;

213.130 Application for parole: Contents; meetings and offices of board; notice of application to victim.

3. The victim of any person applying for parole may submit documents to the board and may testify at the meeting held to consider the application. No application for parole may be considered until the board has notified the victim of his rights pursuant to this subsection and he is given the opportunity to exercise those rights, if he so requests in writing and provides his current address. If a current address is not provided, the board may not be held responsible if such notification is not received by the victim.

4. The board may deliberate in private after a public meeting held to consider an application for parole.

5. The board of state prison commissioners shall provide suitable and convenient rooms or space for use of the board.

6. For the purposes of this section, "victim" has the meaning ascribed to it in NRS 213.005.

[12:149:1933; 1931 NCL § 11580]—(NRS A 1957, 333, 740; 1973, 844; 1977, 263; 1983, 1332, 1439, 1658)

50.070 Termination or threat of termination of employment because of service as witness prohibited; penalty; remedies.

1. Any person, corporation, partnership, association or other entity who is:

- (a) An employer; or
- (b) The employee, agent or officer of an employer, vested with the power to terminate or recommend termination of employment, of a person who is a witness or who has received a summons to appear as a witness in any court, who deprives the witness or person summoned of his employment, as a consequence of his service as a witness or prospective witness, or who asserts to the witness or person summoned that his service as a witness or prospective witness will result in termination of his employment, is guilty of a misdemeanor.

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2. A person discharged from employment in violation of subsection 1 may commence a civil action against his employer and obtain:
 - (a) Wages and benefits lost as a result of the violation;
 - (b) An order of reinstatement without loss of position, seniority or benefits;
 - (c) Damages equal to the amount of the lost wages and benefits; and
 - (d) Reasonable attorney's fees fixed by the court.
 (Added to NRS by 1981, 366)

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178.5694 Harassment of victim or witness by employer; notification by prosecuting attorney of continuance of proceeding.

1. If it is difficult for such a victim or witness to assist in an investigation or cooperate with the prosecuting attorney because he is being harassed, intimidated or subjected to conflicting requirements by his employer, the prosecuting attorney, sheriff or chief of police shall, upon the written request of the victim or witness, intercede on his behalf to minimize any loss of pay or other benefits which would result from his assistance or appearances in court.
2. If a proceeding in court to which such a victim or witness has been subpoenaed will not go on as scheduled, the prosecuting attorney shall:
 - (a) Make a reasonable effort to notify him of that fact; or
 - (b) Provide a system of notification which allows the victim or witness to call by telephone and receive such information.
 In any case, the prosecuting attorney shall, if the victim or witness so requests in writing and provides his current address, ensure that written notice is mailed to that address. If written notice would not be timely, the prosecuting attorney shall make a reasonable effort to notify the victim or witness by some other means.
 (Added to NRS by 1983, 889)

178.5696 Separate waiting area; disposition of personal property; fees for testifying.

1. A court trying a criminal case shall provide victims and witnesses a secure waiting area which is not used by the members of the jury or the defendant and his family and friends.
2. A court or law enforcement agency which has custody of any stolen or other personal property belonging to such a victim or witness shall:
 - (a) Upon the written request of the victim or witness, make available to him a list describing the property held in custody, unless it is shown that the disclosure of the identity or nature of the property would seriously impede the investigation of the crime; or
 - (b) Return the property to him expeditiously when it is no longer needed as evidence.
3. The prosecuting attorney shall inform each such witness of the fee to which he is entitled for testifying and how to obtain the fee.
 (Added to NRS by 1983, 890)

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DISPOSAL OF PHYSICAL EVIDENCE BEFORE CRIMINAL TRIAL

52.385 Property evidencing crime: Procedure for return to person entitled to possession; use of photographs, descriptions, measurements as evidence.

1. At any time after property of any person other than the one accused of the crime of which the property is evidence comes into the custody of a peace officer, the rightful owner of the property or a person entitled to possession of the property may request the prosecuting attorney to return the property to him. The request must allege that:
 - (a) The requester is the rightful owner of the property or a person entitled to possession of the property;
 - (b) The only relevance of the property as evidence in the trial is for visual identification; and
 - (c) Photographs of the property, accompanied by appropriate descriptions and measurements of the property, is sufficient for the visual identification of it.
2. In the absence of such a request, the peace officer having custody of the property may initiate a request to return the property to its owner or a person who is entitled to possession of the property, or to dispose of it in some other manner.
3. Upon receiving a request, the prosecuting attorney shall determine the truth of the allegations contained in the request.
4. If, having personally examined and compared the photographs, the measurements and the property, the prosecuting attorney or his deputy determines that all allegations in the request are in fact true, he may certify the photographs and measurements and order them remanded to the peace officer and the property returned to the owner or other person who is entitled to it.
5. Any photographs and measurements certified under the provisions of this section are admissible in evidence in lieu of the property which is the subject of the photographs, descriptions and measurements.
6. Any property subject to the provisions of this section which is not disposed of under the provisions of this section must be disposed of as provided in NRS 179.125 to 179.175, inclusive.
 (Added to NRS by 1975, 1183; A 1979, 694)

* * *

- 171.204 Persons excluded at defendant's request. The magistrate may, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney general, the district attorney of the county, the defendant and his counsel, the witness who is testifying, the officer having the defendant or a witness in his custody, an attendant to a prosecuting witness designated pursuant to NRS 178.571 and any other person whose presence is found by the magistrate to be necessary for the proper conduct of the examination.
 (Added to NRS by 1967, 1407; A 1969, 628; 1983, 891)

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178.571 Attendant to provide support for certain prosecuting witnesses.

1. A prosecuting witness in a case involving a violation of NRS 200.366, 200.368, 201.180, 201.210, 201.220 or 201.230 may designate an attendant who must be allowed to attend the preliminary hearing and the trial during the witness' testimony to provide support. The person so designated must not himself be a witness in the proceedings.

2. Except as otherwise provided in this subsection, the attendant must not be a reporter or editorial employee of any newspaper, periodical or press association or an employee of any radio or television station. The parent, child, brother or sister of the prosecuting witness may serve as the witness' attendant whether or not he is a person described in the preceding sentence, but no attendant may make notes during the hearing or trial.

3. If the attendant influences or affects, or attempts to influence or affect, in any manner the testimony of the prosecuting witness during the giving of testimony, the court shall exclude that attendant and allow the witness to designate another attendant.

4. The defendant may move to exclude a particular attendant for good cause, and the court shall hear the motion out of the presence of the jury, if any. If the court grants the motion, the prosecuting witness may designate another attendant.

(Added to NRS by 1983, 891)

* * *

193.167 Additional penalty when certain crimes committed against person 65 years of age or older.

1. Any person who commits the crime of:

- (a) Assault;
- (b) Battery;
- (c) Kidnaping;
- (d) Robbery;
- (e) Sexual assault; or

(f) Taking money or property from the person of another, against any person who is 65 years of age or older shall be punished by imprisonment in the county jail or state prison, whichever is applicable, for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime. The sentence prescribed by this section must run consecutively with the sentence prescribed by statute for the crime.

2. This section does not create any separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

(Added to NRS by 1979, 831)

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ABUSE, NEGLECT AND EXPLOITATION OF OLDER PERSONS

200.5091 Policy of state declared. It is the policy of this state to provide for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate state agencies providing human services in identifying the abuse, neglect and exploitation of older persons through the complete reporting of abuse, neglect and exploitation of older persons.

(Added to NRS by 1981, 1334)

200.5092 Definitions. As used in NRS 200.5091 to 200.5099, inclusive, unless the context otherwise requires:

1. "Abuse" means willful and unjustified:

(a) Infliction of pain, injury or mental anguish; or

(b) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person.

2. "Exploitation" means wrongful use of an older person or his money or property to the advantage of another.

3. "Neglect" means the failure of:

(a) A person who has assumed legal responsibility or a contractual obligation for caring for an older person or who has voluntarily assumed responsibility for his care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person; or

(b) An older person to provide for his own needs because of inability to do so.

4. "Older person" means a person who is 60 years of age or older.

5. "Protective services" means services the purpose of which is to prevent and remedy the abuse, exploitation and neglect of older persons. The services may include investigation, evaluation, counseling, arrangement and referral for other services and assistance.

(Added to NRS by 1981, 1334; A 1983, 1359, 1652)

200.5093 Reports: Voluntary and mandatory; investigation.

1. Immediately after an instance of abuse, neglect or exploitation of an older person is suspected, a report must be made to:

(a) The local office of the welfare or aging services division of the department of human resources;

(b) Any police department or sheriff's office; or

(c) The county's office for protective services, if one exists in the county where the suspected action occurred.

If the report of abuse, neglect or exploitation involves an act or omission of the welfare division, aging services division or a law enforcement agency, the report must be made to an agency other than the one alleged to have committed the act or omission. Each agency, after reducing the report to writing, shall forward a copy of the report to the aging services division of the department of human resources.

2. Reports must be made by:

(a) Every physician, dentist, chiropractor, optometrist, resident and intern licensed in this state who examines, attends or treats an older person who appears to have been abused, neglected or exploited.

(b) The superintendent, manager or other person in charge of a hospital or similar institution, upon notification, which must be given by every physician who has attended an older person who appears to have been abused, neglected or exploited pursuant to his performance of services as a member of the staff of the hospital or institution.

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(c) Every professional or practical nurse, physician's assistant, psychologist, ambulance driver and ambulance attendant licensed or certified to practice in this state, who examines, attends or treats an older person who appears to have been abused, neglected or exploited.

(d) Every clergyman or social worker.

(e) Every person who maintains or is employed by a group care facility.

(f) Every attorney, unless he has acquired the knowledge of abuse, neglect or exploitation from a client who has been or may be accused of the abuse, neglect or exploitation.

(g) Any employee of the welfare or aging services division of the department of human resources.

(h) Any employee of a police department, sheriff's office or a county's office for protective services.

3. A report may be filed by any other person.

4. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report within 3 working days.

5. If the investigation of the report results in the belief that the older person is abused, neglected or exploited, the welfare division of the department of human resources or the county's office for protective services may provide protective services to the older person if he is able and willing to accept them.

(Added to NRS by 1981, 1334; A 1983, 1653)

200.5094 Reports: Contents.

1. The report required pursuant to NRS 200.5093 may be made orally, by telephone or otherwise. The person who receives the report must reduce it to writing as soon as possible.

2. The report must contain the following information, when possible:

(a) The name and address of the older person;

(b) The name and address of the person responsible for his care, if there is one;

(c) The name and address, if available, of the person who is alleged to have abused, neglected or exploited the older person;

(d) The nature and extent of the abuse, neglect or exploitation;

(e) Any evidence of previous injuries; and

(f) The basis of the reporter's belief that the older person has been abused, neglected or exploited.

(Added to NRS by 1981, 1335; A 1983, 1654)

200.5095 Reports and records confidential; when disclosure permitted or required.

1. Reports made pursuant to NRS 200.5093 and 200.5094 are confidential.

2. Any person, law enforcement agency or public or private agency, institution or facility who willfully releases data or information concerning the reports and investigation of the abuse, neglect or exploitation of older persons, except:

(a) Pursuant to criminal prosecution under the provisions of NRS 200.5092 to 200.5099, inclusive; and

(b) To persons or agencies enumerated in subsection 3 of this section, is guilty of a misdemeanor.

3. Data or information concerning the reports and investigations of the abuse, neglect or exploitation of an older person is available only to:

(a) A physician who has in his care an older person who he reasonably believes may have been abused, neglected or exploited;

(b) An agency responsible for or authorized to undertake the care, treatment and supervision of the older person;

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(c) A district attorney or other law enforcement official who requires the information in connection with an investigation of the abuse, neglect or exploitation of the older person;

(d) A court which has determined, in camera, that public disclosure of such information is necessary for the determination of an issue before it;

(e) A person engaged in bona fide research, but the identity of the subjects of the report must remain confidential;

(f) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

(g) Any comparable authorized person or agency in another jurisdiction;

(h) A legal guardian of the older person, if the identity of the person who was responsible for reporting the alleged abuse, neglect or exploitation to the public agency is protected, and the legal guardian is not the person suspected of the abuse, neglect or exploitation; or

(i) The person named in the report as allegedly being abused, neglected or exploited, if that person is not legally incompetent.

4. If the person who is reported to have abused, neglected or exploited an older person is the holder of a license or certificate issued pursuant to chapters 630 to 641A, inclusive, of NRS, information contained in the report must be submitted to the board which issued the license.

(Added to NRS by 1981, 1335; A 1983, 1654)

200.5096 Immunity from civil or criminal liability. Immunity from civil or criminal liability extends to every person participating in good faith in the making of a report pursuant to NRS 200.5093 and 200.5094. (Added to NRS by 1981, 1336)

200.5097 Admissibility of evidence. In any proceeding resulting from a report made or action taken pursuant to NRS 200.5092 to 200.5099, inclusive, or in any other proceeding, the report or its contents or any other fact related thereto or to the condition of the older person who is the subject of the report may not be excluded on the ground that the matter would otherwise be privileged against disclosure under chapter 49 of NRS.

(Added to NRS by 1981, 1336)

200.5098 Duties of aging services division of department of human resources. The aging services division of the department of human resources shall:

1. Identify and record demographic information on the older person who is alleged to have been abused, neglected or exploited and the person who is alleged to be responsible for the abuse, neglect or exploitation.

2. Obtain information from programs for preventing abuse of older persons, analyze and compare the programs, and make recommendations to assist the organizers of the programs in achieving the most efficient and effective service possible.

3. Publicize the provisions of NRS 200.5091 to 200.5099, inclusive.

(Added to NRS by 1981, 1335; A 1983, 1655)

200.5099 Penalties.

1. Any person who knowingly and willfully violates NRS 200.5092 to 200.5099, inclusive, is guilty of a misdemeanor.

2. Any adult person who willfully causes or permits an older person to suffer unjustifiable physical pain or mental suffering as a result of abuse, neglect or exploitation, or who willfully causes or permits an older person to be placed in a situation where the person may suffer unjustifiable physical pain or mental suffering as the result of abuse,

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neglect or exploitation, is guilty of a gross misdemeanor unless a more severe penalty is prescribed by law for the act or omission which brings about the abuse, neglect, danger or loss through exploitation. A person who has no legal responsibility or contractual obligation to care for an older person may be convicted of neglecting an older person only if he has voluntarily assumed responsibility for the older person.

3. A person who violates any provision of subsection 2, if substantial bodily or mental harm results to the older person, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years.

4. As used in this section, "permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care and custody of an older person.

(Added to NRS by 1981, 1336; A 1983, 1652, 1655)

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ASSISTANCE TO VICTIMS OF SEXUAL ASSAULT

217.280 "Victim of sexual assault" defined. As used in NRS 217.290 to 217.350, inclusive, "victim of sexual assault" means a person who has been sexually assaulted as defined by NRS 200.366.

(Added to NRS by 1975, 1291; A 1977, 1633)

217.290 County to provide for counseling, medical treatment of victims of sexual assault. The board of county commissioners of each county shall provide by ordinance for the counseling and medical treatment of victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive.

(Added to NRS by 1975, 1291; A 1977, 1633; 1979, 586)

217.300 Emergency medical care: Payment of costs by county.

1. Any victim of sexual assault may request and receive initial emergency medical care at a hospital for any physical injuries which resulted from the sexual assault.

2. Any costs incurred for such treatment shall be charged to and paid by the county in whose jurisdiction the offense was committed.

(Added to NRS by 1975, 1291; A 1977, 1633)

217.310 Medical, psychological treatment of victim, spouse: Application; prerequisite to approval.

1. If any victim of sexual assault requires medical treatment for physical injuries as a result of the sexual assault, in addition to any initial emergency medical care provided, or if any victim or spouse of such a victim suffers emotional trauma as a result of the sexual assault, the victim or spouse may, upon submitting an affidavit as required by subsection 2, apply to the board of county commissioners in the county where the sexual assault occurred for treatment at county expense.

2. The board shall approve an application for treatment upon receiving an affidavit from the applicant declaring that:

(a) The applicant is a victim of sexual assault or spouse of such a victim;

(b) The sexual assault occurred in the county; and

(c) The victim requires medical treatment for physical injuries, or the victim or spouse has suffered emotional trauma, as a result of the sexual assault.

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3. The filing of a report with the appropriate law enforcement agency is a prerequisite to qualify for treatment under the provisions of this section.

(Added to NRS by 1975, 1291; A 1977, 1633; 1979, 586)

217.320 Medical, psychological treatment of victim, spouse: Availability; cost limitation.

1. Upon approval by the board of county commissioners as provided in NRS 217.310, medical treatment for the victim's physical injuries or treatment in the form of psychological, psychiatric and marital counseling for the victim and the victim's spouse must be made available at a county hospital or other facility with which the board may contract for the purpose of providing such treatment.

2. Any costs for treatment provided pursuant to this section, not exceeding \$1,000, shall be paid by the county which authorized the treatment.

(Added to NRS by 1975, 1291; A 1977, 1634; 1979, 587)

217.330 Psychological treatment, counseling of victim, spouse: Certification by person providing treatment required.

1. The board of county commissioners shall require the psychologist, psychiatrist or counselor treating a victim of sexual assault or the victim's spouse for emotional trauma suffered as a result of the sexual assault to certify from time to time that the counseling relates to the sexual assault and that the victim or spouse still suffers from the effects of the emotional trauma which resulted from the sexual assault.

2. If the person providing the treatment fails to make the certification upon request by the board, the board may order the treatment terminated.

(Added to NRS by 1975, 1291; A 1977, 1634; 1979, 587)

217.340 Medical, psychological treatment of victim, spouse: Time limitations. No order for treatment pursuant to NRS 217.310 and 217.320 may be made by the board of county commissioners unless:

1. The application for treatment is made within 60 days after the date of the sexual assault; and

2. The sexual assault was reported to the police within 3 days after its occurrence, or if the offense could not reasonably have been reported within that period, within 3 days after the time when a report could reasonably have been made.

(Added to NRS by 1975, 1292; A 1977, 1634)

217.350 Regulations prescribing procedures. In the performance of its functions under NRS 217.280 to 217.350, inclusive, the board of county commissioners may adopt, rescind and amend regulations prescribing the procedures to be followed in the filing of applications and for such other matters as the board deems appropriate.

(Added to NRS by 1975, 1292)

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33.020 Temporary restraining order in situations of domestic violence; penalty.

1. A temporary restraining order may be granted, with or without notice to the adverse party, if it appears to the satisfaction of the court from specific facts shown by affidavit that the applicant is related to the adverse party by blood or marriage, or is or was actually residing with him, and:

(a) The adverse party has committed an act of violence resulting in actual physical injury upon:

(1) The applicant; or

(2) A minor child of one of the parties; or

(b) There exists the threat of imminent physical injury to the applicant or minor child if the adverse party is not restrained.

2. The affidavit must:

(a) State the length of time the applicant and the adverse party have actually resided together or the length of time since they last actually resided together;

(b) Describe the nature of the relationship between the applicant and the adverse party; and

(c) Describe any property interest the adverse party may have in the applicant's place of residence, if the applicant seeks his removal from that place.

3. The court may require the applicant or the adverse party, or both, to appear before it before determining whether or not to grant the temporary restraining order.

4. The court by the temporary restraining order may:

(a) Enjoin the adverse party from threatening or physically injuring the applicant or minor child.

(b) Exclude the adverse party from the applicant's place of residence for a period not to exceed 30 days where this exclusion is necessary to the physical well-being of the applicant or minor child.

5. A temporary restraining order which is granted with notice to the adverse party expires within such time, not to exceed 30 days, as the court fixes. If the order is granted without that notice, it expires within 15 days after it is issued, unless within that time, for good cause shown, the order is extended for a like period or unless the adverse party consents that it may be extended for a longer period.

6. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

7. The court shall transmit a copy of the temporary restraining order to the local law enforcement agency which has jurisdiction over the residence of the applicant or the minor child.

8. A temporary restraining order may be granted under this section without regard to whether an action for divorce, annulment of marriage or separate maintenance has been filed respecting the applicant and the adverse party.

9. Any person who violates a temporary restraining order granted under this section is guilty of a misdemeanor.

(Added to NRS by 1979, 946)

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ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE

217.400 Definitions. As used in NRS 217.400 to 217.470, inclusive:

1. "Division" means the mental hygiene and mental retardation division of the department of human resources.

2. "Domestic violence" means the attempt to cause or the causing of bodily injury to a family or household member or the placing of the member in fear of imminent physical harm by threat of force.

3. "Family or household member" means a spouse, a former spouse, a parent or other adult person who is related by blood or marriage or is or was actually residing with the person committing the act of domestic violence.

4. "Victim of domestic violence" includes the dependent children of the victim.

(Added to NRS by 1981, 379; A 1983, 909)

217.410 Duties of boards of county commissioners: Creation or designation of advisory board; establishment of fund for assistance to victims of domestic violence; disbursement of money. [Effective until July 1, 1985.] Each board of county commissioners shall:

1. Create an advisory board on domestic violence or designate an existing county board which advises on welfare or other matters relating to social services to serve ex officio as the advisory board. Such a board must consist of not less than three nor more than seven members. If the board of county commissioners:

(a) Creates an advisory board, it shall appoint as members:

(1) At least one member who is a representative of the county or district health department or of a rural mental health center of the division; and

(2) As its other members, persons who are familiar with the problems associated with domestic violence, such as former victims of domestic violence, representatives of organizations which assist such victims, attorneys experienced in domestic relations, social workers, counselors, teachers and ministers.

(b) Designates an existing board to serve ex officio as the advisory board, at least one of the members of that board must be familiar with the problems of domestic violence.

2. Establish within the county treasury an enterprise fund known as the fund for assistance to victims of domestic violence.

3. After consultation with the advisory board:

(a) Award grants of money from that fund, on an annual basis, to eligible organizations which perform services within the county for victims of domestic violence; or

(b) Release money from that fund to the board of county commissioners of any other county pursuant to an interlocal agreement whereby services are made available to residents of the contributing county who are victims of domestic violence.

4. In counties having a population of 250,000 or more, upon the approval of the administrator of the division, appropriate 15 percent of all money which is credited to the account for aid for victims of domestic violence to an organization in the county which has been specifically created to assist victims of rape. The administrator of the division has the final authority in determining whether an organization may receive money appropriated pursuant to this subsection. Any organization which receives money pursuant to this subsection shall furnish reports to the board in the manner required by NRS 217.460. To be eligible for this appropriation, the organization must receive at least 15 percent of its

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money from sources other than the Federal Government, the state, any local government or other public body or their instrumentalities. Any goods or services which are contributed to the organization may be assigned their reasonable monetary value for the purpose of complying with this requirement.

(Added to NRS by 1981, 379; A 1983, 1963; R 1983, 912, effective July 1, 1985)

217.420 Grants from fund for assistance to victims of domestic violence: Eligibility. [Effective until July 1, 1985.] To be eligible for a grant by the board of county commissioners from the fund for assistance to victims of domestic violence, an applicant must:

1. Be a nonprofit corporation, incorporated or qualified in this state.
2. Be governed by a board of trustees which reflects the racial, ethnic, economic and social composition of the county to be served and includes at least one trustee who has been a victim of domestic violence.
3. Receive at least 15 percent of its money from sources other than the Federal Government, the state, any local government or other public body or their instrumentalities. Any goods or services which are contributed to the organization may be assigned their reasonable monetary value for the purpose of complying with the requirement of this subsection.
4. Provide its services exclusively for victims of domestic violence and only within this state for victims who are residents of this state.
5. Require its employees and volunteer assistants to maintain the confidentiality of any information which would identify persons receiving the services.
6. Provide its services without any discrimination on the basis of race, religion, color, age, sex, marital status, national origin or ancestry.
7. Be able to provide:
 - (a) Shelter to victims on any day, at any hour.
 - (b) A telephone service capable of receiving emergency calls on any day, at any hour.
 - (c) Facilities where food can be stored and prepared.
 - (d) Counseling, or make referrals for counseling, for victims or spouses of victims and their children.
 - (e) Assistance to victims in obtaining legal, medical, psychological or vocational help.
 - (f) Education and training for members of the community on matters which relate to domestic violence.

(Added to NRS by 1981, 380)

217.420 Grants from account for aid for victims of domestic violence: Eligibility. [Effective July 1, 1985.] To be eligible for a grant from the account for aid for victims of domestic violence, an applicant must:

1. Be a nonprofit corporation, incorporated or qualified in this state.
2. Be governed by a board of trustees which reflects the racial, ethnic, economic and social composition of the county to be served and includes at least one trustee who has been a victim of domestic violence.
3. Receive at least 15 percent of its money from sources other than the Federal Government, the state, any local government or other public body or their instrumentalities. Any goods or services which are contributed to the organization may be assigned their reasonable monetary value for the purpose of complying with the requirement of this subsection.
4. Provide its services exclusively for victims of domestic violence and only within this state for victims who are residents of this state.
5. Require its employees and volunteer assistants to maintain the confidentiality of any information which would identify persons receiving the services.

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6. Provide its services without any discrimination on the basis of race, religion, color, age, sex, marital status, national origin or ancestry.

7. Be able to provide:

- (a) Except in counties whose population is less than 100,000, shelter to victims on any day, at any hour.
- (b) A telephone service capable of receiving emergency calls on any day, at any hour.
- (c) Except in counties whose population is less than 100,000, facilities where food can be stored and prepared.
- (d) Counseling, or make referrals for counseling, for victims or spouses of victims and their children.
- (e) Assistance to victims in obtaining legal, medical, psychological or vocational help.
- (f) Education and training for members of the community on matters which relate to domestic violence.

(Added to NRS by 1981, 380; A 1983, 909, effective July 1, 1985)

217.430 Grants from fund for assistance to victims of domestic violence: Procedure for application, disbursement of money. [Effective until July 1, 1985.]

1. An application for a grant from the fund for assistance to victims of domestic violence must be submitted to the board of county commissioners at least 3 months before the beginning of the fiscal year for which the grant is desired.
2. When the board of county commissioners receives an application for such a grant, it shall have the advisory board on domestic violence examine the application and advise whether the applicant is eligible for a grant, whether there is a need in the county for the applicant's services, and whether the applicant's program for providing those services is designed to be administered efficiently.
3. The board of county commissioners has the final authority to approve or deny an application for a grant. The board, at least 45 days before the beginning of the fiscal year, shall notify each applicant in writing of the action taken on its application.
4. If an application is approved, the board of county commissioners shall direct the county treasurer to disburse by the beginning of the fiscal year money granted for the first half of the fiscal year, and by the beginning of the second half of the fiscal year money for the second half of the fiscal year.
5. A board of county commissioners may by ordinance make reasonable changes in the periods of time governing applications for and approval of grants and disbursements of money in this section so that these procedures are compatible with existing budgetary procedures.

(Added to NRS by 1981, 380; R 1983, 912, effective July 1, 1985)

217.440 Account for supplemental aid for victims of domestic violence: Creation; administration; application for supplemental grant. [Effective until July 1, 1985.]

1. An account for supplemental aid for victims of domestic violence is hereby created in the state general fund. The account must be administered by the administrator of the division.
2. Any unencumbered balance remaining in any county's fund for assistance to victims of domestic violence 45 days before the end of a fiscal year must be paid to the state treasurer before the beginning of the next fiscal year for credit to the account for supplemental aid to victims of domestic violence.
3. Any nonprofit organization in the state which is able to provide the services specified in subsection 7 of NRS 217.420 may apply for a supplemental grant from the state account.
4. During the first month of a fiscal year the administrator of the

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division shall give written notice to all organizations which received grants from a county for the current fiscal year that they may apply for supplemental grants, to the extent that money is available in the state account created for this purpose. The administrator shall also take appropriate steps to inform other nonprofit organizations which are able to provide the specified services they may apply for grants from the state account.

5. An application for a supplemental grant must be received by the division before the end of the second month of the fiscal year.

(Added to NRS by 1981, 381)

217.440 Account for aid for victims of domestic violence: Creation; administration; application for grant. [Effective July 1, 1985.]

1. An account for aid for victims of domestic violence is hereby created in the state general fund. The account must be administered by the administrator of the division.

2. Any nonprofit organization in the state which is able to meet the requirements specified in subsection 7 of NRS 217.420 may apply for a grant from the account for aid for victims of domestic violence.

3. An application for a grant must be received by the division before April 1 preceding the fiscal year for which the grant is sought.

(Added to NRS by 1981, 381; A 1983, 910, effective July 1, 1985)

217.445 Expenditure of grant must be approved by division. [Effective July 1, 1985.] No organization in a county whose population is less than 100,000 which receives a grant from the account for aid for victims of domestic violence may expend that money until its budget for using the money is approved by the division.

(Added to NRS by 1983, 909, effective July 1, 1985)

217.450 Procedure for award of supplemental grants. [Effective until July 1, 1985.]

1. The mental hygiene and mental retardation advisory board shall advise the administrator of the division concerning the award of supplemental grants from the state account.

2. Upon receiving one or more applications for supplemental grants, the administrator of the division shall submit the applications to the mental hygiene and mental retardation advisory board for examination and evaluation and shall consult with the board on each applicant's qualifications to receive a grant, based on the range of services which the applicant offers to victims of domestic violence.

3. The administrator of the division has the final authority to approve or deny an application for a grant. The administrator shall notify each applicant in writing of the action taken on its application within 45 days after the deadline for filing such an application.

4. All supplemental grants which have been awarded must be disbursed from the state account to the recipients by the end of the 5th month of the fiscal year. Money remaining in the account after disbursement of the grants for any year does not revert and may be awarded in a subsequent year.

5. The administrator may adopt regulations which make reasonable changes in the schedule for supplemental grants set forth in this section so that the schedule is compatible with the existing budgetary procedures of the division or any county.

(Added to NRS by 1981, 381)

217.450 Procedure for award of grants; formula. [Effective July 1, 1985.]

1. The mental hygiene and mental retardation advisory board shall advise the administrator of the division concerning the award of grants from the account for aid for victims of domestic violence.

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2. The administrator of the division shall give priority to those applications from organizations which offer the broadest range of services for the least cost within one or more counties. The administrator shall not approve the use of money from a grant to acquire any buildings.

3. The administrator of the division has the final authority to approve or deny an application for a grant. The administrator shall notify each applicant in writing of the action taken on its application within 45 days after the deadline for filing such an application.

4. In determining the amount of money to be allocated for grants, the administrator of the division shall use the following formula:

(a) A base allocation of \$5,000 must be made to provide services for residents of each county whose population is less than 100,000. For counties whose population is 100,000 or more, the base allocation is \$25,000.

(b) Any additional revenues available in the account must be allocated to grants, on a per capita basis, for all counties whose population exceeds 14,000.

(c) Money remaining in the account after disbursement of grants does not revert and may be awarded in a subsequent year.

217.460 Reports. [Effective until July 1, 1985.]

1. Each organization which has received a grant from a board of county commissioners for assistance to victims of domestic violence shall furnish quarterly and annual financial reports to that board in a manner which the board may prescribe.

2. The annual report must include:

(a) The number of persons who were provided services other than counseling or referrals;

(b) The number of persons who were provided counseling or referrals; and

(c) The results of an independent audit of the organization's financial records.

3. The reports must not identify any person served by the reporting organization or provide any information by which any such person might be identified.

(Added to NRS by 1981, 381)

217.460 Reports from recipients of grants; report from administrator of division to legislature. [Effective July 1, 1985.]

1. Each organization which has received a grant for assistance to victims of domestic violence shall furnish quarterly and annual financial reports to the administrator of the division in a manner which the administrator may prescribe.

2. The administrator shall review the reports from the organizations, compile the information contained in them about the individual programs for assistance to victims of domestic violence, conduct a financial review of all expenditures, and make a comprehensive report biennially to the legislature, including an evaluation of the effectiveness of the respective organizations in aiding victims of domestic violence.

(Added to NRS by 1981, 381; A 1983, 911, effective July 1, 1985)

217.470 Duties of county advisory boards, boards of county commissioners and administrator. [Effective until July 1, 1985.]

1. The county advisory board on domestic violence shall:

(a) Examine the quarterly and annual reports;

(b) Evaluate the effectiveness of the respective organizations in aiding victims of domestic violence; and

(c) Report its conclusions and recommendations to the board of county commissioners.

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2. The board of county commissioners shall review the annual report and the conclusions of its advisory board and shall make annual recommendations to the administrator of the division regarding the success of the whole program for assistance to victims of domestic violence and any need for additional legislation.

3. The administrator shall review the reports from the boards of county commissioners, compile the information contained in them about the individual programs for assistance to victims of domestic violence, and make a comprehensive report biennially to the legislature.

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	651:2(VI); 651:62 et seq.; 651:63
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	651:25(II)(c) (by offender on work release), 651:64 et seq.
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	516:16; 592-A:12
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	641:5
6.2 Protective Orders	See, 651:2(VI) (restriction on parolee's travel to protect victim)
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	651-A:11
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	651:4-a
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	651-A:11-a
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	632-A:8
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	173-B:1 et seq.
14.2 Domestic Violence Shelters	173-B:12 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	173-B:21 (domestic violence information)
15.4 Sexual Assault Counselor Privilege	

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New Hampshire Revised Statutes Annotated

651:2 Sentences and Limitations.

VI. A person may be sentenced to a period of conditional discharge if he is not imprisoned and the court is of the opinion that probationary supervision is unnecessary, but that the defendant should conduct himself according to conditions determined by the court. Such conditions may include (a) restrictions on the defendant's travel, association, place of abode, such as will protect the victim of the crime or insure the public peace; (b) an order requiring the defendant to attend counselling or any other mode of treatment the court deems appropriate; and (c) restitution to the victim. The period of a conditional discharge shall be 3 years for a felony and one year for a misdemeanor or violation. However, if the court has required as a condition that the defendant make restitution or reparation to the victim of his offense and that condition has not been satisfied, the court may, at any time prior to the termination of the above periods, extend the period for a felony by no more than 2 years and for a misdemeanor or violation by no more than one year in order to allow the defendant to satisfy the condition. During any period of conditional discharge the court may, upon its own motion or on petition of the defendant, discharge the defendant unconditionally if the conduct of the defendant warrants it. The court is not required to revoke a conditional discharge if the defendant commits an additional offense or violates a condition. [Amended 1979, 377:8, eff. Aug. 22, 1979.]

651:25 Release from State Prison.

I. The warden may release any person who has been committed to the state prison at any time during the term of sentence for the purpose of obtaining and working at gainful employment or for such other purpose as may be deemed conducive to his rehabilitation, for such times or intervals of time and under such terms and conditions as may be prescribed by the warden, in accordance with policies adopted by the board of trustees of the state prison pursuant to RSA 541-A, provided, however, that a prisoner who has not served sufficient time to be eligible for parole may be released under this section only if the sentencing court has been notified of the proposed release and has not objected within 10 days of receipt of such notice. The warden may permit inmates of the state prison, who volunteer to do so, to be gainfully employed outside the institution when such employment is considered in their best interest and the best interest of the state. Inmates may be so employed for the state or for public or private employers. [Amended 1981, 205:1, eff. Aug. 7, 1981.]

II. The rates of pay and other conditions of employment of a person released for work shall be the same as those paid or required in the locality in which the work is performed. An inmate so employed shall surrender to the warden his total earnings less payroll deductions authorized by law, including income taxes. After deducting from the earnings of each person an amount determined to be the cost of the person's keep, the warden shall:

(a) allow the person to draw from the balance a sufficient sum to cover his incidental expenses;

(b) credit to his account such amount as seems necessary to accumulate a reasonable sum to be paid to him on his release;

(c) cause to be paid such part of any additional balance as is needed for restitution payments to authorized claimants pursuant to RSA 651:62 through 66;

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Restitution

651:62 Definitions. As used in this subdivision, unless the context otherwise indicates, the following words shall have the following meanings:

I. "Claimant" means a victim, dependent or any person legally authorized to act on behalf of the victim.

II. "Dependent" means the victim's widow, widower, children, parents, persons in the direct line of ascent or descent, or next of kin, including common law wife or husband of the deceased and posthumous children, who were wholly or partially dependent, in fact, upon the victim for care or support.

III. "Economic loss" means pecuniary detriment suffered by the victim, including the value of damaged, destroyed or lost property, reasonable medical costs and loss of employment income.

IV. "Offender" means any natural person convicted of a criminal or delinquent act.

V. "Restitution" means moneys, compensation, work or service to be reimbursed by the offender to the victim who suffers personal injury, death or economic loss under this subdivision.

VI. "Victim" means a person or claimant who suffers personal injury, death or economic loss as a direct result of an offender's criminal conduct or of the good faith effort of any person attempting to prevent or preventing the criminal conduct.

Source. 1981, 329:2, eff. Aug. 16, 1981.

Purpose. 1981, 329:1, eff. Aug. 16, 1981, provided:

"I. The legislature finds and declares that the victims of crimes often suffer losses through no fault of their own and for which there is no compensation. It also finds that repayment, in whole or in part, by the offender to the victim of his crime can operate to rehabilitate the offender in certain instances. It is the purpose of this act to encourage the compensation of victims by the person most responsible for the loss incurred by the victim, the offender. Restitution by the offender can serve to reinforce the offender's sense of responsibility for the

offense, to provide him the opportunity to pay his debt to society and to his victim in a constructive manner, and to ease the burden of the victim as a result of the criminal conduct.

"II. The legislature recognizes that a crime is an offense against society as a whole, not only against the victim of the crime, and that restitution for victims is therefore ancillary to the central objectives of the criminal law. It intends restitution to be applied only when other purposes of sentencing can be appropriately served. It does not intend the use of restitution to result in preferential treatment for offenders with substantial financial resources."

651:63 Restitution Authorized. Any offender may be sentenced to make restitution. Such restitution may be in addition to a fine and may be a condition of probation or parole. Restitution may also be authorized as a condition of any work release program administered under RSA 651:19 or 25.

Source. 1981, 329:2, eff. Aug. 16, 1981.

651:64 Time and Method of Restitution. When restitution is authorized, the time and method of payment or performance of the services shall be specified by the court. Monetary compensation which is not to be paid in installments or at a later specified time shall be paid to the state department of probation. In those cases, the probation department shall make the disbursement to the claimant, and when monetary restitution is authorized as a condition of probation or parole, the depart-

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ment of probation shall disburse the funds to the claimant. When monetary restitution is authorized as a condition of a work release program under RSA 657:25, the state prison warden shall disburse the funds to the claimant.

Source. 1981, 329:2, eff. Aug. 16, 1981.

651:65 Civil Actions. This subdivision does not bar, suspend, or otherwise affect any right or liability for damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in such civil action constitutes an economic loss. Any restitution ordered and paid shall be deducted from the amount of any judgment awarded in a civil action brought by the victim or other authorized claimant against the offender based on the same facts. If the restitution ordered and made was work restitution, the reasonable value of the services may be deducted from any such judgment.

Source. 1981, 329:2, eff. Aug. 16, 1981.

651:66 Revocation of Restitution. The supervising agency, or the offender who has been sentenced to pay restitution and has not inexcusably defaulted in payment thereof, may at any time petition the court which sentenced him for a revocation of any unpaid portion of the restitution. If the court finds that the circumstances which warranted the imposition of the restitution have changed, or that it would otherwise be unjust to require payment, the court may revoke the unpaid portion of the restitution in whole or in part, or modify the time and method of payment.

Source. 1981, 329:2, eff. Aug. 16, 1981.

651:67 Failure to Make Restitution. Any offender who is sentenced to make restitution under RSA 651:63, and who violates the court's order by either failing to make restitution or by defaulting in the payment or performance of the restitution authorized, shall be guilty of contempt.

Source. 1981, 329:2, eff. Aug. 16, 1981.

* * *

Fees of Witnesses

516:16 Attendance; Travel. The fees of witnesses shall be \$30 for each day's attendance before a municipal, district, superior, or probate court or legally constituted auditors, referees, magistrates or officials having the power to summon witnesses, except as otherwise specially provided; for each mile's travel to and from the place of testifying, mileage shall be paid at the rate of \$.17 per mile; mileage to be allowed for each day's attendance where the witness is required to leave the town or city in which he resides to testify.

Source. RS 229:12. 1850, 963:1. CS 91:1. PS 287:13. 1905, 52:3. 1917, 245:12. GS 272:12. GL 290:12. 1883, 14:1. 1925, 54:1. PL 336:18. RL

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592-A:12 Payment of Witness Fees. Any person who attends municipal, district or superior court for the state pursuant to subpoena shall be paid the witness fees provided by RSA 516:16. It shall be the duty of the clerk of the court which the witness was compelled to attend to maintain a register of all persons who have been required to attend court by the state. From this register the clerk of court shall pay all witness fees monthly to all persons who are entitled to such fees as appears by said register. The payment of such witness fees by the clerk of municipal courts shall be made out of moneys collected by the court as provided in RSA 502:14, provided, however, that the county upon written approval thereof by the county attorney shall reimburse the municipal court monthly for all witness fees in excess of \$100 incurred in any criminal case exceeding the jurisdiction of the court to try and in which the hearing is for the purpose of determining probable cause to bind over the respondent to the superior court. The payment of such witness fees in the superior court shall be a charge against the county.

Source. 1951, 163, par. 12-a. RSA Amendments—1979. Amended section 592:13. 1957, 244:8. 1959, 20:1. 1979, generally. 316:1, eff. Aug. 21, 1979.

[Section effective July 1, 1984; see also RSA 592-A:12 set out above.]

592-A:12 Payment of Witnesses in Criminal Cases. Any person who attends any court for the state pursuant to subpoena shall be paid the witness fees provided by RSA 516:16. It shall be the duty of the clerk of court to maintain a register of all persons who have been required to attend court for the state. From this register the clerk of court shall pay all witness fees at least monthly to all persons who are entitled to such fees as appears by said register. The payment of such witness fees shall follow procedures established by the supreme court.

Source. 1951, 163, par. 12-a. RSA Amendments—1979. Amended section 592:13. 1957, 244:8. 1959, 20:1. 1979, generally. 316:1. 1983, 383:59, eff. July 1, 1984.

Amendments—1979. Amended section generally. —1983. Substituted "any court of the state" for "municipal, district or superior court for the state" in the first sentence and "for" for "by" following "required to attend court" in the second sentence, inserted "at least" preceding "monthly", rewrote the fourth sentence, and deleted the fifth sentence.

641:5 Tampering with Witnesses and Informants. A person is guilty of a class B felony if

I. believing that an official proceeding, as defined in RSA 641:1, II, or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to

- (a) testify or inform falsely; or
- (b) withhold any testimony, information, document or thing; or
- (c) elude legal process summoning him to provide evidence; or
- (d) absent himself from any proceeding or investigation to which he has been summoned; or

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II. he commits any unlawful act in retaliation for anything done by another in his capacity as witness or informant; or

III. he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in paragraph I.

651:4-a Victims Permitted to Speak Before Sentencing. Before a judge sentences any person for capital, first degree or second degree murder, attempted murder, aggravated felonious sexual assault, first degree assault, or negligent homicide committed in consequence of being under the influence of intoxicating liquor or controlled drugs, the victim of the offense, or the victim's next of kin if the victim has died, shall have the opportunity to address the judge. The victim or victim's next of kin may appear personally or by counsel and may reasonably express his views concerning the offense, the person responsible, and the need for restitution. The prosecutor, the person to be sentenced, and the attorney for the person to be sentenced shall have the right to be present when the victim or victim's next of kin so addresses the judge. The judge may consider the statements of the victim or next of kin made pursuant to this section when imposing sentence.

Source. 1983, 319:4, eff. Aug. 17, 1983.

651-A:11 Notice of Hearings.

I. At least 15 and not more than 30 days prior to any parole hearing, the state board of parole shall twice publish, in a newspaper of general circulation within the county where the offense occurred, a notice stating the intention of the person to seek parole. Said notice shall contain the name of the applicant and the date and location of the parole hearing.

II. At least 15 and not more than 30 days prior to any parole hearing, the state board of parole shall send by first class mail to each chief of police and county attorney of the place where the offense occurred, where the person resided prior to conviction, or where the person intends to reside after release, a copy of the information described in paragraph I.

II-a. At least 15 and not more than 30 days prior to any parole hearing, the state board of parole shall send a copy of the information described in paragraph I by first class mail to the victim of the person seeking parole, or to the next of kin of such victim if the victim has died, if request for such notice has been filed with the board. The victim or next of kin so requesting shall keep the board apprised of his current mailing address.

III. The state board of parole shall conduct no parole hearing without first having met the notice requirements of this section.

Source. 1983, 416:16, eff. July 1, 1983; Amendments—1983. Paragraph I: Amended generally. Paragraph II: Amended generally. Paragraph II-a: Added.

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651-A: 11-a Victims Permitted to Speak at Parole Hearings. The victim of any person seeking parole, or the victim's next of kin if the victim has died, shall have the right to appear at the parole hearing of such person, personally or by counsel, and to reasonably express his views concerning the offense and the person responsible.

Source. 1983, 319: 3, eff. Aug. 17, 1983.

632-A: 8 In Camera Testimony. In the cases where the victim is under 16 years of age, the victim's testimony shall be heard in camera unless good cause is shown by the defendant. The record of the victim's testimony shall not be sealed and all other testimony and evidence introduced during the proceeding shall be public.

Source. 1979, 195: 1, eff. Aug. 7, 1979.

CHAPTER 173-B

PROTECTION OF PERSONS FROM DOMESTIC VIOLENCE

173-B: 1	Definitions.	Domestic Violence Grant Program
173-B: 2	Jurisdiction and Venue.	
173-B: 3	Commencement of Proceedings; Hearing.	173-B: 12 Definitions.
173-B: 4	Relief.	173-B: 13 Fund for Domestic Violence Programs.
173-B: 5	Guardian Ad Litem.	173-B: 14 Grant Program Established.
173-B: 6	Temporary Relief.	173-B: 15 Duties of the Director.
173-B: 7	Notification.	173-B: 16 Selection of Coordinator.
173-B: 8	Violation of Protective Orders.	173-B: 17 Compensation for Coordinating Domestic Violence Grant Program.
173-B: 9	Protected by Peace Officers.	
173-B: 10	Notice to Victim.	173-B: 18 Duties of Coordinator.
173-B: 11	Emergency Care; Limitation of Liability.	173-B: 19 Criteria for Selection of Direct Service Grantees.
[New Sections]		173-B: 20 Evaluation Board.
173-B: 11-a	Orders Enforceable.	173-B: 21 Confidentiality.
		173-B: 22 Referral.
		173-B: 23 Rights Reserved.

173-B: 1 Definitions. As used in this chapter:

I. "Abuse" means the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or purposely or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;

(b) Purposefully placing or attempting to place another in fear of imminent bodily injury either by physical menace or by threats to commit a crime against the person of the other;

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(c) Attempting to or engaging in sexual penetration with another under any of the circumstances outlined in RSA 632-A: 2.

II. "Family or Household Member" means:

(a) Spouses, ex-spouses, persons cohabitating with each other, persons who cohabited with each other but who no longer share the same residence; and [Amended 1981, 522: 1, eff. Aug. 28, 1981.]

(b) Parents and other persons related by consanguinity or affinity other than minor children who reside with the defendant.

Source. 1979, 377: 2. 1981, 522: 1, eff. Aug. 28, 1981.

Amendments—1981. Paragraph II(a): Following the words "persons who cohabited with each other" deleted the words "for more than one year".

Statement of purpose. 1979, 377: 1, eff. Aug. 22, 1979, provided:

"I. It is the public policy of this state to prevent and deter domestic violence through equal enforcement of the criminal laws and the provision of judicial relief for domestic violence victims.

"II. It is the purpose of this act [this chapter] to preserve and protect the safety of the family unit for all family or household members by entitling victims of domestic violence to immediate and effective police protection and judicial relief. This act shall be liberally construed to the end that its purpose may be fulfilled."

ANNOTATIONS

New Hampshire Practice

Text analysis of cases affecting this section. 1 N.H.P. Criminal § 150.

173-B: 2 Jurisdiction and Venue.

I. All district courts shall have concurrent jurisdiction with the superior court over all proceedings under this chapter.

II. If the plaintiff has left the residence or household to avoid further abuse, the plaintiff shall have the option to commence proceedings pursuant to RSA 173-B: 3 in the county or district where the plaintiff temporarily resides. Proceedings under this chapter may be transferred to another court upon the motion of any party or the court as the interests of justice or the convenience of the parties may require.

Source. 1979, 377: 2, 1981, 522: 2, eff. Aug. 28, 1981.

Amendments—1981. Paragraph I: First sentence of existing section designated as par. I.

Paragraph II: Second sentence of existing section designated as par. II and last sentence added which begins "Proceedings under this chapter . . .".

173-B: 3 Commencement of Proceedings; Hearing.

I. Any person may seek relief pursuant to RSA 173-B: 4 by filing a petition in the county or district where the plaintiff or defendant resides alleging abuse by the defendant. Notice of the pendency of the action and of the facts alleged against the defendant shall be given to the defendant, either personally or as provided in paragraph II. Notice of the whereabouts of the plaintiff shall not be revealed except by order of the court for good cause shown. Any answer by the defendant shall be filed with the court and a copy shall be provided to the plaintiff by the court.

II. No filing fee or fee for service of process shall be charged for a petition under paragraph I and the plaintiff may proceed without legal counsel. Either a peace officer or the sheriff's department shall serve process under this section. Any proceeding under this chapter shall not preclude any other available civil or criminal remedy.

III. The clerks of the district and superior courts shall supply forms for petitions for relief under this chapter designed to facilitate pro se proceedings.

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IV. Upon entry of any action in a district court, where the court determines that there is pending in the superior court a cause arising out of the same situation on which the district court action is based, the cause shall be transferred to the superior court to be heard and tried as if originally entered in the superior court, unless the district court determines that the interests of justice or expediency require the district court to exercise jurisdiction. Any transfer to the superior court under this paragraph shall be made as soon as practicable following entry of the action.

V. The findings of facts shall be final but questions of law may be transferred to the supreme court in the same manner as from the superior court. [Added 1982, 25: 1, eff. March 17, 1982.]

VI. The court shall hold a hearing within 30 days of the filing of a petition under this section or within 10 days of service of process upon the defendant, whichever occurs later. [Added 1982, 25: 1, eff. March 17, 1982.]

Source. 1979, 377: 2. 1981, 522: 3. generally.
1982, 25: 1, eff. March 17, 1982. —1982. Paragraphs V and VI: Added.

173-B: 4 Relief.

I. Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse, which relief may include:

(a) Protective orders:

(1) Directing the defendant to refrain from abusing or interfering in any way with the person or liberty of the plaintiff; or

(2) Enjoining the defendant from entering the premises wherein the plaintiff resides unless the defendant exclusively owns or leases and pays for the premises and the defendant has no legal duty to support the plaintiff or minor children on the premises; [Amended 1981, 522: 4, eff. Aug. 28, 1981.]

(b) Other relief:

(1) Granting to the plaintiff the exclusive right of use and possession of the household furniture, furnishings and automobile unless the defendant exclusively owns such personal property and the defendant has no legal duty to support the plaintiff or minor children; [Amended 1981, 522: 5, eff. Aug. 28, 1981.]

(2) Awarding temporary custody of the parties' minor children to either party, or, where appropriate to the division of welfare, provided that

(i) Where custody of the parties' minor children may be appropriate with the division of welfare, the division of welfare shall receive actual notice of the hearing 10 days prior to said hearing, provided that, if necessary, said hearing may be continued 10 days to provide the division adequate notice;

(ii) The division of welfare may move at any time to rescind their custody of the parties' minor children;

(3) Establishing temporary visitation rights with regard to the parties' minor children;

(4) Directing the defendant to pay financial support to the plaintiff or minor children unless the defendant has no legal duty to support the plaintiff or minor children;

(5) Recommending that either or both the parties attend counseling or such other treatment as the court may deem appropriate; or [Amended 1981, 522: 11, eff. Aug. 28, 1981.]

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(6) Ordering the defendant to pay the person abused monetary compensation for losses suffered as a direct result of the abuse which may include, but not be limited to, loss of earnings or support, medical

III. Upon actual notice, awarding custody of minor children to either party or to the division of welfare when in the best interest of a child. [Amended 1981, 522: 8, eff. Aug. 28, 1981.]

Source. 1979, 377: 2. 1981, 522: 8, eff. Aug. 28, 1981. phrased and included reference to awarding custody when in best interest of a child.

Amendments—1981. Paragraph III: Re-

173-B: 7 Notification. A copy of any order made under this chapter which prohibits any person from abusing or interfering with the person or liberty of another or which affects either party's access to or possession of either party's residence shall be transmitted forthwith to the local law enforcement agency having jurisdiction to enforce said order. Law enforcement agencies shall establish procedures whereby a peace officer at the scene of an alleged violation of such an order may be informed of the existence and terms of such order.

Source. 1979, 377: 2, eff. Aug. 22, 1979.

173-B: 8 Violation of Protective Orders. Upon notice by the plaintiff, someone designated by the plaintiff, or any peace officer alleging that the defendant has violated any protective order issued under this chapter, the court shall issue a summons to the defendant, requiring the defendant to appear and show cause within 14 days why he should not be found in contempt of court and punished therefor. Any such hearing may be held by the court in any county or district in which the plaintiff or defendant temporarily or permanently resides at the time of the alleged violation.

Source. 1979, 377: 2. 1981, 522: 9, eff. Aug. 28, 1981. son" and added last sentence "Any such hearing may be held by the court in any county or district in which the plaintiff or defendant temporarily or permanently resides at the time of the alleged violation".

Amendments—1981. Following the words "Upon notice by the", at the beginning of the first sentence, substituted the words "plaintiff, someone designated by the plaintiff, or any peace officer" for "per-

173-B: 9 Protection by Peace Officers. Whenever any peace officer has reason to believe that a family or household member has been abused, that officer shall use all means within reason to prevent further abuse.

Source. 1979, 377: 2, eff. Aug. 22, 1979.

173-B: 10 Notice to Victim.

I. All peace officers shall give victims of abuse immediate and adequate notice of their right to go to the district or superior court of their county to file a petition asking for protective orders against the attacker and to sign a criminal complaint at the police station.

II. It shall be the responsibility of the clerk of the court to advise victims that they may request that the judge issue an order:

(a) Restraining the attacker from abusing the victim;

(b) Directing the attacker to leave the household;

(c) Giving the victim custody of any minor children;

(d) Directing the attacker to support the victim and any minor children if the attacker has a legal responsibility to support either or both; or

(e) Directing the attacker to pay the victim for financial losses due to any injuries suffered due to the attack.

Source. 1979, 377: 2. 1981, 522: 10, eff. Aug. 28, 1981. Amendments—1981. Amended provisions relative to giving victims of abuse immediate and adequate notice of their rights.

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173-B: 11 Emergency Care; Limitation of Liability. Any act or omission of any peace officer rendering emergency care or assistance to a victim of domestic violence, including but not limited to transportation to medical facilities, shall not impose civil liability upon the peace officer or his supervisors or employer if the care or assistance is rendered in good faith unless the act or omission is a result of gross negligence or willful misconduct.

Source. 1979, 377: 2, eff. Aug. 22, 1979.

173-B: 11-a Orders Enforceable. Any protective order issued under this chapter shall be effective throughout the state, in all districts and counties.

Source. 1981, 522: 13, eff. Aug. 28, 1981.

Domestic Violence Grant Program

173-B: 12 Definitions. In this subdivision:

I. "Coordinator" means the agency or organization appointed by the director to administer the domestic violence grant program.

II. "Director" means the director of the division of welfare, department of health and welfare.

III. "Division" means the division of welfare, department of health and welfare.

IV. "Domestic violence" means attempting to cause or causing bodily injury to a family or household member, or placing a family or household member by threat of force in fear of imminent physical harm, or attempting to or engaging in sexual penetration with a family or household member under any of the circumstances outlined in RSA 632-A: 2.

V. "Family or household member" means a spouse, a former spouse, person living with another person, whether or not as spouses, parent, or other adult person related by consanguinity or affinity, who is residing or has resided with the person committing the domestic violence and dependents of such persons.

VI. "Fund" means the special fund for domestic violence programs established by RSA 173-B: 13.

VII. "Grantee" means any private, town, city, or regional agency or organization applying for funds.

VIII. "Program" means services or facilities provided to family or household members who are victims of domestic violence.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 13 Fund for Domestic Violence Programs. There is hereby established a special fund for domestic violence programs. The sole purpose of the fund shall be to provide revenues for the domestic violence grant program, as provided in 173-B: 14, and said moneys shall not be available for any other purpose. The state treasurer shall deposit all fees received under RSA 457: 29 in the fund. All moneys deposited in the fund are continually appropriated for the purposes of the domestic violence grant program and shall not lapse.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 14 Grant Program Established. There is hereby established a grant program within the division for the allocation of grant money to

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New Hampshire programs which provide aid and assistance to victims of domestic violence. The grant program shall be funded by the fund established under RSA 173-B: 13.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 15 Duties of the Director. The director shall:

I. Administer the grant program established in RSA 173-B: 14, through a coordinator. The costs of administration shall be covered by the fund, not to exceed 8 percent.

II. Adopt rules under RSA 541-A relative to procedures under which interested New Hampshire programs may apply for funding.

III. Appoint the coordinator.

IV. Enter into a contract with the coordinator, subject to the approval of the governor and council.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 16 Selection of Coordinator. The director shall be satisfied that the organization or agency chosen as the coordinator shall be qualified to provide at least those services listed in RSA 173-B: 18.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 17 Compensation for Coordinating Domestic Violence Grant Program. Compensation for the functions and duties of coordinating the program shall not exceed 30 percent of the total revenues of the fund.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 18 Duties of Coordinator. The coordinator shall be a statewide organization or agency which has demonstrated its ability, at a minimum:

I. To serve as a clearinghouse for information relating to domestic violence.

II. To conduct educational programs on domestic violence, both for the general public and for specialized interest groups, such as law enforcement and medical personnel.

III. To provide technical assistance, in the areas of budget, management, and other such skills, to local domestic violence programs.

IV. To enlist the assistance of public and voluntary health, education, welfare, legal, and rehabilitation agencies in a concerted effort to prevent domestic violence.

V. To provide coordination and supervision of programs.

VI. To assist the director in the administration of the fund.

VII. To publicize the availability of the fund, the date by which applications must be received, and to act on all applications within 45 days of the application deadline.

VIII. To notify each agency or organization in writing whether or not it is eligible for funds, and to specify the amount available.

IX. To publicize the availability of domestic violence programs to the public.

X. To provide training for court advocates and social services agency advocates to accompany the family or household member who is a victim of domestic violence.

XI. To apply for and receive any federal funds for which this program would be eligible.

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XII. To ensure as far as possible that grants are awarded on a reasonable geographical basis throughout the state.

XIII. To obtain and evaluate reports from each grantee, at least annually, on its operations under this subdivision.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 19 Criteria for Selection of Direct Service Grantees. The director shall use all of the following criteria for selecting grantees:

I. A grantee's ability to provide direct services to victims of domestic violence:

- (a) Shelter on a 24 hours a day, 7 days a week basis, or safe homes.
- (b) A 24 hours a day, 7 days a week switchboard for crisis calls.
- (c) Temporary housing and food facilities.
- (d) Psychological support and peer counseling.
- (e) Referrals to existing services in the community and followup on the outcome of the referrals.
- (f) A drop-in center to assist victims of domestic violence who have not yet made the decision to leave their homes, or who have found other shelter but who have a need for support services.
- (g) Arrangements for school age children to continue their education during their stay at the center.
- (h) Emergency transportation to the shelter, and when appropriate, arrangements with local law enforcement for assistance in providing such transportation.
- (i) Trained court advocates and social service agency advocates to accompany the family or household member who is a victim of domestic violence.

II. A grantee shall be a private, or private nonprofit organization, or a public agency.

III. A grantee shall demonstrate the need for the services proposed by the program.

IV. A grantee shall establish its ability to secure community support and its efficiency of administration.

V. A grantee shall receive at least 50 percent of its funding from sources other than the fund, including town, city, county, federal, or private sources. Contributions in kind, whether material, commodities, transportation, office space, or personal services, may be evaluated and counted as part of the required non-state funding.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 20 Evaluation Board.

I. There is established a board of 3 members, all of whom shall have experience and knowledge with regard to the problems of domestic violence. The board shall evaluate the domestic violence grant program.

II. The governor and council shall appoint the members, who shall each serve a term of 3 years with each term to begin January 1 and to end December 31, except that the first appointees shall serve according to the following provision: one member shall serve a one year term, one member shall serve a 2 year term, and one member shall serve a 3 year term.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 21 Confidentiality. All persons who are employed, appointed, or who volunteer under this subdivision shall maintain confidentiality with re-

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gard to persons served by the coordinator and grantees and files kept by the coordinator and grantees.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 22 Referral. Where centers are available, any law enforcement officer who investigates an alleged incident of domestic violence may advise the person subject to such violence of the availability of programs from which he or she may receive services.

Source. 1981, 223: 2, eff. June 11, 1981.

173-B: 23 Rights Reserved. A defendant shall not be prejudiced by the court having jurisdiction under RSA 173-B for having left the residence or household to avoid further domestic violence.

Source. 1981, 223: 2, eff. June 11, 1981.

Category	Citation
1. Victim Compensation Program	52:4B-1 et seq.
1.1 Responsible Agency	52:4B-3
1.2 Eligible Claimants	52:4B-10, 52:4B-18
1.3 Losses Covered	52:4B-12
1.4 Minimum and Maximum Award	52:4B-18(d)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	52:4B-18
1.7 Filing of Claim - Time Limit	52:4B-18
1.8 Emergency Award	52:4B-10.1
1.9 Funding	2C:4B-3.1
2. Restitution	
2.1 Sentencing Option	2C:43-3; 2C:45-1(b)(8)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	2C:46-1 et seq.; 2A:8-31.1 et seq. (by offender on work program)
3. Esconrow and Forfeiture of Offender Profits	52:4B-26 et seq.
4. Witness Fees	22A:1-4
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	2C:28-5; 2C:29-3
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	52:4B-22
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	2C:44-6(b)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	2C:65-1 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	52:4B-25 (victim counseling service)
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	2C:43-6(d),(e), 2C:43-7(a)(6),(d); 2C:44-1(2), 2C:44-3(e), 2C:44-6(b)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	2C:25-1 et seq.
14.1 Protective Orders	2C:25-10 et seq.
14.2 Domestic Violence Shelters	30:14-1 et seq.
14.3 Domestic Violence Reporting	2C:25-8, 2C:25-16
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	2C:25-16 (domestic violence incidents)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	2C:25-16 (domestic violence reports)
15.4 Sexual Assault Counselor Privilege	2A-84A-22.11, 2A:84A-22.12

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New Jersey Statutes Annotated

CHAPTER 4B. COMPENSATION FOR VICTIMS OF CRIME

- Sec.
- 52:4B-1. Short title.
- 52:4B-2. Definitions.
- 52:4B-3. Violent crimes compensation board; members; appointment; allocation to department of law and public safety.
- 52:4B-4. Term of office; reappointment; removal; compensation.
- 52:4B-4.1. Tenure of member with 10 years of service.
- 52:4B-5. Employment of experts, assistants and employees.
- 52:4B-6. Principal office; place of conduct of affairs.
- 52:4B-7. Hearings.
- 52:4B-8. Attorney fees.
- 52:4B-9. Rules and regulations; determination of compensation.
- 52:4B-10. Persons entitled to compensation; order.
- 52:4B-10.1. Emergency award.
- 52:4B-11. Causes of personal injury or death.
- 52:4B-12. Losses or expenses reimbursable.
- 52:4B-13. Panel of impartial medical experts.
- 52:4B-14. Reports of treatment or examination of injured person or decedent.
- 52:4B-15. Order for appointment of impartial medical experts; direction of examination; report.
- 52:4B-16. Notice of examination; time of report; expert as witness at hearing.
- 52:4B-17. Fees of designated expert.
- 52:4B-18. Limitation of action; reduction of award for contributing to injury; grounds for denial.
- 52:4B-18.1. Increased compensation; applicability [New].
- 52:4B-19. Amounts receivable from other sources; filing of order for compensation; authorization for payment.
- Sec.
- 52:4B-20. Subrogation of board to cause of action of victim against person responsible for personal injury or death.
- 52:4B-21. Severability.
- 52:4B-22. Distribution of information.
- 52:4B-23. Failure to give notice; immunity from liability; nonalteration of requirements.
- 52:4B-24. Senior citizens public awareness program.
- 52:4B-25. Victim counseling service [New].
- 52:4B-2. Definitions
- As used in this act:
- "Child" means an unmarried person who is under 21 years of age and includes a stepchild or an adopted child;
- "Board" means the Violent Crimes Compensation Board established by this act;
- "Dependents" means such relatives of a deceased victim as were wholly or partially dependent upon his income at the time of his death and shall include the child of such victim born after his death;
- "Personal injury" means actual bodily harm and includes pregnancy and mental or nervous shock;
- "Relative" of any person means his spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents;
- "Family relationship group" of any person means:
- (1) any person related to such person within the third degree of consanguinity or affinity,
- (2) any person living in the same household as such person, or
- (3) any person maintaining a sexual relationship, whether illicit or not, with such person or with any member of the family of such person;
- "Victim" means a person who is injured or killed by any act or omission of any other person which is within the description of any of the offenses specified in section 11 of this act.¹

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52:4B-3. Violent crimes compensation board; members; appointment; allocation to department of law and public safety.

There is hereby established in the Executive Branch of the State Government a Violent Crimes Compensation Board which shall be composed of 3 5 citizens, to be appointed by the Governor, with the advice and consent of the Senate, one of whom shall be designated chairman by, and serve as such at the pleasure of, the Governor. Not more than two three of the members of the board shall be members of the same political party. At least two three members of the board shall be attorneys admitted to the practice of law in the State of New Jersey. For the purposes of complying with the Constitution (Article V, Section IV, paragraph 1) the board is allocated to the Department of Law and Public Safety but, notwithstanding said allocation, the board shall be independent of any supervision or control by the department or the Attorney General or any other officer of the department.

L.1971, c. 317, § 3, eff. Oct. 4, 1971. Amended by L.1981, c. 396, § 1, eff. Jan. 6, 1982.

Section 2 of L.1981, c. 396, provides:

"The initial term of one of the additional members to be appointed pursuant to this amendatory and supplementary act shall expire on December 6, 1984 and the initial term of the second member shall expire December 6, 1985. Each member, however, shall serve until his successor is duly appointed and qualified."

Administrative Code References

Violent crimes compensation board, see N.J. A.C. 13:75-1.1 et seq.

Library References

States 45.
C.J.S. States §§ 79, 80, 82, 136.

Notes of Decisions

1. Independence

It was error for violent crimes compensation board to assign determinative effect to conclusion of law enforcement agency with respect to criminality vel non of act producing event; although members of board may give substantial weight to conclusions of investigative law enforcement agencies, considered along with all other evidence, ultimate determination is obligation of board uncontrolled by determination of others. Matter of Saferstein, 160 N.J. Super. 393, 390 A.2d 137 (A.D.1978).

52:4B-4. Term of office; reappointment; removal; compensation

The term of office of each member of the board shall be 5 years and until his successor is appointed and qualifies, except that of the members first appointed one shall be appointed for a term of 5 years, one for a term of 4 years and one for a term of 3 years. All vacancies, except through the expiration of term, shall be filled for the unexpired term only.

Each member of the board shall be eligible for reappointment and any member of the board may be removed by the Governor for inefficiency, neglect of duty or malfeasance in office.

Each member of the board shall receive the same annual compensation as that payable to judges of compensation and shall devote his full time and capacity to his duties, and shall not engage in any other occupation, profession or employment.

L.1971, c. 317, § 4, eff. Oct. 4, 1971.

Library References

States 51.
C.J.S. States §§ 61, 87, 92.

52:4B-4.1. Tenure of member with 10 years of service

Any member of the board who shall have served for 10 years successively and shall be in his third term, shall have tenure in office during good behavior.

52:4B-5. Employment of experts, assistants and employees

The board is authorized to appoint and fix the duties and compensation of such officers, attorneys, examiners, and other experts as may be necessary for carrying out its functions under this act, and the board may, subject to Title 11 of the Revised Statutes, "Civil Service," appoint and fix the duties and compensation of such other assistants and employees as are necessary.

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52:4B-6. Principal office; place of conduct of affairs

The principal office of the board shall be in Trenton, New Jersey, but the board may sit and conduct its affairs in any place.

L.1971, c. 317, § 6, eff. Oct. 4, 1971.

52:4B-7. Hearings

Hearings upon applications for compensation under this act shall be conducted in the following manner:

a. Upon an application made to the board under the provisions of this act, the board shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant;

b. For the purpose of carrying out the provisions of this act, the board, or any member thereof, may hold such hearings, sit and act at such times and places, and take such testimony as the board or such member may deem advisable. Any member of the board may administer oaths or affirmations to witnesses. The board shall have full powers of subpoena and compulsion of attendance of witnesses and production of documents, except that no subpoena shall be issued except under the signature of a member of the board, and application to any court for aid in enforcing such subpoena may be made in the name of the board by any member thereof. Subpoenas shall be served by any person designated by the board;

c. In any case in which the person entitled to make an application is a child, the application may be made on his behalf by his parent or guardian. In any case in which the person entitled to make an application is mentally incompetent, the application may be made on his behalf by his guardian or such other individual authorized to administer his estate;

d. Any person having a substantial interest in a proceeding may appear, produce evidence and cross-examine witnesses in person or by his attorney.

e. The board may receive in evidence any statement, document, information, or matter that may in the opinion of the board contribute to its functions under this act, but the board shall not be bound by the rules of evidence.

f. If any person has been convicted of any offense with respect to an act or omission on which a claim under this act is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

52:4B-8. Attorney fees

The board may, as a part of any order entered under this act, determine and allow reasonable attorney fees, which shall not exceed 15% of the amount awarded as compensation under section 10 of this act,¹ to be paid in addition to the amount of such compensation, to the attorney representing the applicant, and it shall be unlawful for any such attorney to ask for, contract for or receive any larger sum than the amount so allowed.

52:4B-9. Rules and regulations; determination of compensation

In the performance of its functions, the board is authorized to make rules and regulations prescribing the procedures to be followed in the filing of applications and the proceedings under this act, and such other matters as the board deems appropriate.

In determining the amounts of compensation payable pursuant to this act the board shall insofar as practicable formulate standards for uniform application of this act and shall take into consideration rates and amounts of compensation payable for injuries and death under other laws of this State and of the United States and the availability of funds appropriated for the purposes of this act.

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52:4B-10. Persons entitled to compensation; order

In any case in which a person is injured or killed by any act or omission of any other person which is within the description of the offenses listed in section 11 of this act,¹ the board may, upon application and the concurrence of a majority of the members thereof, order the payment of compensation in accordance with the provisions of this act:

a. to or on behalf of the victim,

b. in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person, or

c. in the case of the death of the victim, to or for the benefit of the dependents of the deceased victim, or any one or more of such dependents.

In determining whether to make an order under this section, the board may consider any circumstances it determines to be relevant, including provocation, consent or the behavior of the victim which directly or indirectly contributed to his injury or death, the prior case history, if any, of the victim and any other relevant matters.

An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such act or omission. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under this act for such period as it deems appropriate on the ground that a prosecution for an offense arising out of such act or omission has been commenced or is imminent.

For the purposes of this act, a person shall be deemed to have intended an act or omission notwithstanding that by reason of age, insanity or otherwise, he was legally incapable of forming a criminal intent.

52:4B-10.1. Emergency award

The Violent Crimes Compensation Board may make one or more emergency awards to any applicant for compensation pending final determination of a case, when it determines that compensation is likely to be provided and that the applicant will suffer undue hardship if funds are not made immediately available. The amount of any one emergency award shall not exceed \$500.00 with the total amount of each such award made to an individual applicant not to exceed \$1,500.00. Any emergency awards made to an applicant shall be deducted from the final amount of compensation provided to an applicant by the board. If the amount of compensation made by the board to an applicant is less than the sum provided to the applicant through emergency grants, the applicant shall pay to the board an amount of money equal to the difference. If the board determines that an applicant who has received emergency awards shall receive no compensation, the applicant shall repay to the board the total amount of all emergency awards which he received.

L.1981, c. 258, § 1, eff. Aug. 12, 1981.

Assembly Judiciary, Law, Public Safety and Defense Committee Statement

Assembly, No. 2062—L.1981, c. 258

The purpose of this bill, as amended, is to make available emergency hardship funds for victims eligible for awards as a result of violent crimes. This would clarify any question as to the authority of the Violent Crimes Compensation Board to provide such awards which may now be present. The maximum amount of any one award shall not exceed \$500.00 with the total amount of emergency funds to an individual applicant not to exceed \$1,500.00.

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52:4B-13. Panel of impartial medical experts

To assist the board in determining the nature, extent or cause of personal injury or cause of death compensable under this act, the board shall maintain a panel of impartial medical experts. The specialties to be represented on the panel and the number of experts in each specialty shall be determined jointly by the Medical Society of New Jersey and the board. The experts to serve on the panel in the several specialties shall be designated by the Medical Society of New Jersey.

52:4B-12. Losses or expenses reimbursable

The board may order the payment of compensation under this act for:

- expenses actually and reasonably incurred as a result of the personal injury or death of the victim,
- loss of earning power as a result of total or partial incapacity of such victim,
- pecuniary loss to the dependents of the deceased victim, and
- any other pecuniary loss resulting from the personal injury or death of the victim which the board determines to be reasonable.

52:4B-14. Reports of treatment or examination of injured person or decedent

Prior to a hearing on any application pursuant to this act, the applicant or his attorney shall submit reports from all physicians or surgeons or duly accredited religious practitioners who have treated or examined the injured party or the decedent. If in the opinion of the board an examination of the injured person and a report thereon or a report on the cause of death by an impartial medical expert would be of material aid to the just determination of the action, the board may order such an examination, where appropriate, and report by an expert or experts chosen from the panel of impartial medical experts.

52:4B-15. Order for appointment of impartial medical experts; direction of examination; report

The order for the appointment of impartial medical experts and directing an examination of an injured party and report thereon or a report on the cause of death of a decedent shall, to the extent applicable and with due regard to the religious tenets of an applicant:

- Designate the name of the impartial medical expert and his specialty;
- Specify the conditions and scope of the examination to be conducted and the report to be made;
- Direct the injured party to submit to a physical examination as specified in the order;
- Direct all parties and their counsel to deliver to the board for the use of the designated expert all medical reports, X-rays, X-ray reports and records and reports of pathological or neurological examinations or tests of the injured party or of the decedent which are in their possession or under their control;
- Direct the injured party or his counsel to prepare a list of the names and addresses of any physicians or hospitals which may have any relevant medical records and to deliver the same to the board, for the use of the designated expert, together with a written and signed consent for the examination by the designated expert of any hospital records or other medical records or reports which are not in the possession or under the control of the injured party or his counsel;
- Direct the injured party to be examined to disclose to the designated expert at his request, and not otherwise, any fact necessary and relevant to his examination and report;
- Authorize the designated expert to make or to have made by others of his selection such supplementary diagnostic procedures or tests as shall be necessary and relevant to his examination and report and direct the party to be examined to submit thereto; and

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h. Fix the date by which the examination is to be made and the date by which the report of the designated expert is to be delivered to the board.
L.1971, c. 317, § 15, eff. Oct. 4, 1971.

Library References

States — 184.12.
C.J.S. States §§ 280, 290.

52:4B-16. Notice of examination; time of report; expert as witness at hearing

The designated expert, upon receipt of all the reports, records and other pertinent medical information, shall fix the time and place of examination and give notice thereof to the applicant or his attorney who may be present with applicant at said examination. The report of said expert shall be filed with the board prior to the date set for the hearing of the matter. If, in the discretion of the board, the testimony of said expert is required at the hearing, he shall be called as a witness and he may be cross-examined.

L.1971, c. 317, § 16, eff. Oct. 4, 1971.

Library References

States — 184.12.
C.J.S. States §§ 280, 290.

52:4B-17. Fees of designated expert

The fees of the designated expert, both for his examination and report and for his appearance in court, when necessary, together with the fees for any supplemental diagnostic procedures or tests ordered by him in connection with such examination and report, shall be approved by the board for payment out of funds appropriated for the administration of this act.

L.1971, c. 317, § 17, eff. Oct. 4, 1971.

Library References

States — 111.
C.J.S. States §§ 194, 195.

52:4B-18. Limitation of action; reduction of award for contributing to injury; grounds for denial

No order for the payment of compensation shall be made under section 10 of this act¹ unless the application has been made within 2 years after the date of the personal injury or death or after that date upon determination by the board that good cause exists for the delayed filing, and the personal injury or death was the result of an offense listed in section 11 of this act² which had been reported to the police within 3 months after its occurrence.

*****The board will make its determination regarding the application within six months of acknowledgment by the board of receipt of the completed application and any and all necessary supplemental information.*****

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In determining the amount of an award, the board shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board shall reduce the amount of the award or reject the application altogether, in accordance with such determination; provided, however, that the board shall not consider any conduct of the victim contributory toward his injury, if the record indicates such conduct occurred during efforts by the victim to prevent a crime or apprehend a person who had committed a crime in his presence or had in fact committed a crime.

No compensation shall be awarded if the victim:

a. Is a relative of the offender,

**and the victim and offender presently live in the same household or
[that] the victim did not cooperate in the prosecution of the
offender*,*

b. Was at the time of the personal injury - of the victim living with the offender as a member of his family relationship group.

ship group[, except when the board determines that the circum-
stances of the case warrant compensation]* *and the victim and
offender presently live in the same household or the victim did not
cooperate in the prosecution of the offender*,*

c. Was guilty of a violation of subtitle 10³ or 12⁴ of Title 2A or subtitle 2 of Title 2C⁵ of the New Jersey Statutes, which caused or contributed to his injuries,

d. Was injured as a result of the operation of a motor vehicle, boat or airplane unless the same was used as a weapon in a deliberate attempt to run the victim down.

No award shall be made on an application unless the applicant has incurred a minimum out-of-pocket loss of \$100.00 or has lost at least 2 continuous weeks' earnings or support; except that the requirement of a minimum out-of-pocket loss shall not apply to any applicant 60 years of age or older or any applicant who is disabled as defined pursuant to the federal Social Security Act (42 U.S.C. Section 416(i)). Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such application is based.

No compensation shall be awarded under this act in an amount in excess of \$25,000.00, and all payments shall be made in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this act shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis of the claim.

L.1971, c. 317, § 18, eff. Oct. 4, 1971. Amended by L.1981, c. 307, § 1, eff. Nov. 30, 1981; L.1982, c. 192, § 1, eff. Dec. 6, 1982; L.1982, c. 193, § 1, eff. Dec. 6, 1982.

¹ Section 52:4B-10.

² Section 52:4B-11.

³ Sections 2A:83-1 to 2A:151-63.

⁴ Sections 2A:169-1 to 2A:171-12.

⁵ Section 2C:11-1 et seq.

NEW JERSEY

Assembly Judiciary, Law Public Safety and Defense Committee Statement

Senate, No. 622—L.1982, c. 192

This bill would increase to \$25,000.00 the maximum compensation which may be paid to or on behalf of a victim of a violent crime and would create a victim counseling service.

Under current law, the maximum amount that can be paid by the Violent Crimes Compensation Board to or on behalf of the victim of a violent crime for unreimbursable medical expense or other expenses necessary as a result of a crime-related injury is \$10,000.00. This bill raises the maximum to \$25,000.00. The increase would apply only to victims of crimes committed after the bill became effective.

The bill also would require the Violent Crimes Compensation Board to establish a victim counseling service which would be available to victims free of charge and would provide information about how to file a claim with the Violent Crimes Compensation Board, how to obtain emergency food and clothing, how to find employment, and how to obtain assistance from other social service agencies and legal advice.

The Senate Law, Public Safety and Defense Committee amended the bill so that it would take effect immediately but would remain inoperative unless and until Assembly Bill No. 953 of 1982, now pending before the Legislature, was enacted into law. Assembly Bill No. 953 would generate additional funds for use by the Violent Crimes Compensation Board of assessing a \$25.00 penalty against persons convicted of any disorderly persons offense, petty disorderly persons offense, or violation of the "Controlled Dangerous Substances Act," and a \$10.00 penalty against juveniles adjudicated delinquent.

Senate Law, Public Safety and Defense Committee Statement

Assembly, No. 450—L.1982, c. 193

This bill, as amended by the Assembly Judiciary Committee, eliminates for any person over 60 years old and for any person who is disabled, as defined by the Federal Social Security Act (2 U.S.C. Section 416(i)) the requirement that a minimum loss of \$100.00 be incurred in order to receive violent crimes compensation.

1. Periodic payments

Under statutes providing that all payments of compensation to victims of violent crimes shall be in lump sum "except that in case of death or protracted disability the award may provide for periodic payments to compensate for loss of earnings or support," failure of board, within one year of its creation, to promulgate standards or establish or adopt criteria with regard to periodic payments did not vitiate portion of order providing for a 10 1/2-year payout to claimant; it would be appropriate to adopt regulations based on studied consideration and experience. In re Hollywood, 124 N.J.Super. 50, 304 A.2d 747 (A.D.1973).

Where 73-year-old woman who was dependent on murdered son to supplement her support claimed compensation for his murder, decision of the violent crimes compensation board was not arbitrary, capricious or unreasonable in providing for support of \$75 per month continuing until entire maximum of \$10,000 was used up or until claimant's death, rather than making lump-sum award of the \$10,000. Id.

Within statutes providing that all payments of compensation to victims of violent crimes shall be in lump sum "except that in the case of death or protracted disability the award may provide for periodic payments to compensate for loss of earnings or support," and that board in determining amounts payable is to consider availability of funds appropriated for such purpose, provision for periodic payments was not unenforceable on theory that there were insufficient standards to guide the board. Id.

2. Amount

Determination by the violent crimes compensation board that decedent's wife and children suffered no compensable economic loss by virtue of his murder because social security benefits, source of compensation contemplated by statute requiring board to take into consideration monies received or to be received as result of victim's death, exceeded amount of support provided by decedent at time of his death, resulting in denial of compensation with exception of certain funeral expenses and counsel fees, was supported by evidence and was within discretion accorded by statute to board. Davis v. Violent Crimes Compensation Bd., Dept. of Law and Public Safety of New Jersey, 145 N.J.Super. 337, 367 A.2d 1174 (A.D.1976).

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3. Limitation of action

Compliance with statutory requirement of Criminal Injuries Compensation Act of 1971 that application for compensation be filed in timely fashion is condition precedent to eligibility for compensation. *White v. Violent Crimes Compensation Bd.*, 76 N.J. 368, 388 A.2d 206 (1978).

4. — Tolling limitation of action

Limitation period of Criminal Injuries Compensation Act of 1971 may be tolled for period of victim-applicant's crime-induced incapacity in circumstances where late-filing of application for compensation does not prejudice ability of violent crimes compensation board to verify victim's eligibility. *White v. Violent Crimes Compensation Bd.*, 76 N.J. 368, 388 A.2d 206 (1978).

Limitation period for filing claims under Criminal Injuries Compensation Act of 1971 was tolled, with reference to claim filed by victim of assault and rape, for period during which victim was socially incapacitated by her injuries and by "rape trauma syndrome," and, where victim's delay in filing claim did not prejudice ability of violent crimes compensation board to verify her eligibility for benefits, claim was timely even though filed almost two months after expiration of statutory one-year period. *Id.*

52:4B-18.1. Increased compensation; applicability

The increase in compensation to a maximum of \$25,000.00 provided for in this amendatory and supplementary act shall apply only to crimes committed after the effective date of this act when personal injury or death occurs.

L.1982, c. 192, § 3.

Effective date of L.1982, c. 192, see note under § 52:4B-18.

Statement: Committee statement to Senate, No. 622—L.1982, c. 192, see § 52:4B-18.

52:4B-19. Amounts receivable from other sources; filing of order for compensation; authorization for payment

In determining the amount of compensation to be allowed by order, the board shall take into consideration amounts received or receivable from any other source or sources by the victim or his dependents as a result of the offense or occurrence giving rise to the application.

Each order for compensation made by the board shall be filed with the Director of the Division of Budget and Accounting and shall constitute authority for payment by the State Treasurer to the person or persons named therein of the amounts specified in such order.

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52:4B-20. Subrogation or board to cause of action of victim against person responsible for personal injury or death

Whenever an order for the payment of compensation is or has been made for personal injury or death resulting from an act or omission constituting an offense under this act, the board shall, upon payment of the amount of the order, be subrogated to the cause of action of the applicant against the person or persons responsible for such personal injury or death and shall be entitled to bring an action against such person or persons for the amount of the damage sustained by the applicant and in the event that more is recovered and collected in any such action than the amount paid by reason of the order for payment of compensation, the board shall pay the balance to the applicant.

L.1971, c. 317, § 20, eff. Oct. 4, 1971.

Library References

Subrogation ⇨ 11.
C.J.S. Subrogation § 16.

52:4B-21. Severability

If any section or sections of this act or any provision thereof shall be declared to be unconstitutional, invalid or inoperative in whole or in part, such section or provision shall, to the extent that it is not unconstitutional, invalid or inoperative be enforced and effectuated and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the sections of this act.

52:4B-22. Distribution of information

Every State, county, and municipal police department and hospital or other place of emergency medical care shall have available and shall post in a public place informative booklets, pamphlets or other pertinent written information, to be supplied by the Violent Crimes Compensation Board, relating to the availability of crime victims compensation including all necessary application blanks required to be filed with the board. Every police department shall, upon the filing of a report of a violent crime, make available to any victim information concerning crime victims compensation.

L.1981, c. 256, § 1, eff. Aug. 12, 1981.

Title of Act:

A Supplement to the "Criminal Injuries Compensation Act of 1971," approved October

4, 1971 (P.L.1971, c. 317, C. 52:4B-1 et seq.).
L.1981, c. 256.

Library References

Criminal Law ⇨ 1220.
C.J.S. Criminal Law § 2007.

52:4B-23. Failure to give notice; immunity from liability; nonalteration of requirements

No cause of action against the State, any county, or any municipality, or any employee, thereof, shall arise out of a failure to give the notice required by section 1,¹ nor shall any such failure be deemed or construed to effect or alter any time limitation or other requirement contained in this act for the filing or payment of a claim hereunder.

L.1981, c. 256, § 2, eff. Aug. 12, 1981.

¹ Section 52:4B-22.

52:4B-24. Senior citizens public awareness program

The board shall undertake a special senior citizens public awareness program to make brochures and applications for claim forms available to senior citizens.

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52:4B-25. Victim counseling service

a. The Violent Crimes Compensation Board shall establish a victim counseling service which shall provide counseling to victims as defined in the act to which this act is a supplement. The service shall be conducted at such locations within the State as the board deems advisable.

b. The board is authorized to appoint such personnel for the service as may be necessary to carry out its functions.

c. The service shall provide assistance to victims without charge, which assistance shall include information and advice relative to filing a claim with the board, emergency food and clothing, employment opportunities, referral to other social service agencies, and in obtaining legal advice or representation.

* * *

Assembly Corrections, Health and Human Services Committee Statement

Assembly, No. 275—L.1983, c. 85

This bill requires that photo-identification cards be issued to adult recipients of aid to families with dependent children (AFDC) as a condition of receiving public assistance.

Presently, such recipients must have identification cards but are not now required to have a photograph on the card. A representative for the State Department of Human Services informed the committee that over 90% of present recipients have photo-ID cards.

The committee agreed with the department that an amendment to allow the future use of increasingly accurate identification methods was necessary and released the bill with an amendment.

COMPENSATION OF CRIME VICTIM—OFFENDER RELATIVE OF VICTIM

CHAPTER 86

ASSEMBLY NO. 452

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

- Assembly committee amendments adopted May 20, 1982.
- Senate committee amendment adopted September 23, 1982.
- Senate amendments adopted November 29, 1982.
- Assembly amendments adopted in accordance with Governor's recommendations January 27, 1983.

* * *

NEW JERSEY

2C:43-3.1. Additional penalties; collection and disposition by violent crimes compensation board

a. (1) In addition to any disposition made pursuant to the provisions of N.J.S. 2C:43-2, any person convicted of a crime of violence resulting in the injury or death of another person, shall be assessed a penalty of at least \$25.00, but not to exceed \$10,000.00 for each such crime for which he was convicted. In imposing this penalty the court shall consider factors such as the severity of the crime, the defendant's criminal record, the defendant's ability to pay and the economic impact of the penalty on the defendant's dependents.

(2) (a) In addition to any other disposition made pursuant to the provisions of N.J.S. 2C:43-2 or any other statute imposing sentences for crimes, any person convicted of ~~an~~ any disorderly persons offense, any petty disorderly persons offense, violation of the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 226 (C. 24:21-1 et seq.), ~~under N.J.S. 2C:12-1a~~, or any crime not resulting in the injury or death of another person shall be assessed a penalty of \$25.00 for each such offense or crime for which he was convicted.

(b) In addition to any other disposition made pursuant to the provisions of section 20 of P.L.1973, c. 306 (C. 2A:4-61) or any other statute indicating the dispositions that can be ordered for adjudications of delinquency, any juvenile adjudicated delinquent according to the definition of "delinquency" established in section 3 of P.L.1973, c. 306 (C. 2A:4-44) shall be assessed a penalty of at least \$10.00 for each such adjudication, but shall not exceed the amount which could be assessed, if the offense was committed by an adult.

(3) All penalties provided for in this section shall be collected as provided for collection of fines and restitution in section 3 of this act¹ and forwarded to the Violent Crimes Compensation Board as provided in subsection (4) hereof.

(4) All moneys collected pursuant to subsections 1 and 2 shall be forwarded to the State Treasury to be deposited in a separate account for use by the Violent Crimes Compensation Board in satisfying claims filed and for related administrative costs pursuant to the provisions of the "Criminal Injuries Compensation Act of 1971," P.L.1971, c. 317 (C. 52:4B-1 et seq.).

b. All moneys, including fines and restitution, collected from a person convicted of ~~an~~ any disorderly persons offense, any petty disorderly persons offense, violation of the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 226 (C. 24:21-1 et seq.), ~~under N.J.S. 2C:12-1a~~, from any juvenile adjudicated delinquent or any crime shall be applied first to any penalty imposed pursuant to this section upon such a person.

* * *

2C:43-3. Fines and Restitutions

A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

a. \$100,000.00, when the conviction is of a crime of the first or second degree;

b. \$7,500.00, when the conviction is of a crime of the third or fourth degree;

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c. \$1,000.00, when the conviction is of a disorderly persons offense;

d. \$500.00, when the conviction is of a petty disorderly persons offense.

e. Any higher amount equal to double the pecuniary gain to the offender or loss to the victim caused by the conduct constituting the offense by the offender. In such case the court shall make a finding as to the amount of the gain or loss, and if the record does not contain sufficient evidence to support such a finding the court may conduct a hearing upon the issue. For purposes of this section the terms "gain" means the amount of money or the value of property derived by the offender and "loss" means the amount of value separated from the victim.

f. Any higher amount specifically authorized by another section of this code or any other statute.

The restitution ordered paid to the victim shall not exceed his loss. Any restitution imposed on a person shall be in addition to any fine which may be imposed pursuant to this section.

2C:45-1. Conditions of Suspension or Probation.

a. When the court suspends the imposition of sentence on a person who has been convicted of an offense or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or is likely to assist him to do so. These conditions may be set forth in a set of standardized conditions promulgated by the county probation department and approved by the court.

b. The court, as a condition of its order, may require the defendant:

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(8) To make restitution of the fruits of his offense, in an amount he can afford to pay, for the loss or damage caused thereby;

CHAPTER 46

FINES AND RESTITUTIONS

Section

2C:46-1. Time and method of payment; disposition of funds.

2C:46-2. Consequences of nonpayment; summary collection.

2C:46-3. Revocation of fine.

2C:46-4. Fines and restitution; collection; disposition.

2C:46-5. Inapplicability of act to fines and restitutions imposed under Title 39 or in proceedings in juvenile and domestic relations court.

2C:46-1. Time and method of payment; disposition of funds

a. When a defendant is sentenced to pay a fine or to make restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine or restitution shall be payable forthwith.

b. When a defendant sentenced to pay a fine or to make restitution is also sentenced to probation, the court may make continuing payment of installments on the fine or restitution a condition of probation.

c. The defendant shall pay a fine or any installment thereof to the officer entitled by law to collect the fine. In the event of default in payment, such agency shall take appropriate action for its collection.

2C:46-2. Consequences of nonpayment; summary collection

a. When a defendant sentenced to pay a fine or make restitution defaults in the payment thereof or of any installment, the court, upon the motion of the person authorized by law to collect the fine or restitution, the motion of the prosecutor or upon its own motion, may recall him, or issue a summons or a warrant of

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arrest for his appearance. After a hearing, the court may reduce the fine or restitution, suspend it, or modify the payment or installment plan, or, if none of these alternatives is warranted, may impose a term of imprisonment to achieve the objective of the sentence. The term of imprisonment in such case shall be specified in the order of commitment. It need not be equated with any particular dollar amount but it shall not exceed 1 day for each \$20.00 of the fine nor 40 days if the fine was imposed upon conviction of a disorderly persons offense nor 25 days for a petty disorderly persons offense nor 1 year in any other case, whichever is the shorter period. In no case shall the total period of imprisonment in the case of a disorderly persons offense for both the sentence of imprisonment and for failure to pay a fine exceed 6 months. When a fine is imposed on a corporation, it is the duty of the person or persons authorized to make disbursements from the assets of the corporation or association to pay it from such assets and their failure so to do may be held to be contumacious.

b. Upon any default in the payment of a fine, a restitution, or any installment thereof, execution may be levied and such other measures may be taken for collection of it or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt.

2C:46-3. Revocation of fine

A defendant who has been sentenced to pay a fine may at any time petition the court which sentenced him for a revocation of the fine or of any unpaid portion thereof. If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the fine or the unpaid portion thereof in whole or in part.

3. a. All fines and restitution shall be collected as follows:

(1) All fines and restitution imposed by the Superior Court or county district court, or otherwise imposed at the county level, shall be collected by the county probation department except when such fine or restitution is imposed in conjunction with a custodial sentence to a State correctional facility in which event such fine or restitution shall be collected by the Department of Corrections.

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(2) All fines and restitution imposed by a municipal court shall be collected by the municipal court clerk except if such fine or restitution is ordered as a condition of probation in which event it shall be collected by the county probation department.

All fines so collected shall be distributed to the appropriate governmental treasury as provided herein.

* * *

MUNICIPAL COURT JUDGE—WORK ORDERS

CHAPTER 153¹

ASSEMBLY NO. 346

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendment adopted May 20, 1982.

**—Senate committee amendments adopted December 13, 1982.

An Act authorizing municipal courts to issue work orders in lieu of other punishment in certain cases.

***1. Any defendant sentenced by a municipal court to pay a fine or make restitution who defaults in payment thereof or of any installment may, in lieu of any other modification of the sentence, after a satisfactory showing of the defendant's indigency, be ordered to perform work in a work program established or designated by the municipality. The court shall order the defendant to perform work upon the motion of the person authorized by law to collect the fine or restitution, the motion of the prosecutor, or its own motion, and shall issue the order only with the consent of the defendant and the municipality. The work performed by a defendant under a court order may be performed in an existing community service program and shall be performed in the municipality in which the offense occurred. A court work order shall**

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expire upon receipt by the clerk of written notice that the defendant has completed the work assigned in a satisfactory manner.

2. The municipal official in charge of the work program shall report to the municipal court any failure of a person subject to a court work order to report for work or to perform the assigned work. Upon receipt of such a report the court may revoke its work order and impose **[an appropriate]* *any* sentence *consistent with the original sentence**.

3. This act shall take effect immediately.

PROCEEDS FROM CONTRACT WITH ACCUSED OF A
VIOLENT CRIME TO SELL REENACTMENT

CHAPTER 33

SENATE NO. 434

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate amendments adopted November 8, 1982.

AN ACT concerning certain moneys received by persons accused of crimes and supplementing the "Criminal Injuries Compensation Act of 1971," approved October 4, 1971 (P. L. 1971, c. 317; C. 52:4B-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Legislature finds and declares that every contract with a person convicted or accused of a crime in this State or an agent, assignee, beneficiary, conservator, executor, guardian, representative, relative, friend, associate or conspirator of a person convicted

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or accused of a crime in this State, with respect to the reenactment of the crime, by way of a movie, book, magazine article, other literary expression, recording, radio or television presentation, live entertainment or presentation of any kind, or from the expression of the person's thoughts, feelings, opinions or emotions regarding the crime is contrary to public policy and void unless the contract provides for payment of the moneys in escrow to the Violent Crimes Compensation Board in accordance with the procedures set forth in this act.

2. As used in this act:

a. "Victim" means any person who suffers personal injury or death or incurs loss of or injury to personal or real property as a result of the crime;

b. "Victim's representative" means one who represents or stands in the place of a victim, including but not limited to a spouse, parent, relative, guardian, dependent, heir, or executor.

3. Every person, firm, corporation, partnership, association or other legal entity contracting with a person convicted or accused of a crime in this State or an agent, assignee, beneficiary, conservator, executor, guardian, representative, relative, friend, associate or conspirator of a person convicted or accused of a crime in this State, with respect to the reenactment of the crime, by way of a movie, book, magazine article, other literary expression, recording, radio or television presentation, live entertainment or presentation of any kind, or from the expression of the person's thoughts, feelings, opinions or emotions regarding the crime, shall submit a copy of the contract to the board and shall pay over to the board all moneys which would otherwise, by terms of the contract, be owing the person convicted or accused of a crime in this State or an agent, assignee, beneficiary, conservator, executor, guardian, representative, relative, friend, associate or conspirator of a person convicted or accused of a crime in this State. The

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board shall deposit these moneys in an interest bearing escrow account for the benefit of and payable to any victim of the convicted or accused person or the victim's representative, provided that the person is eventually convicted of the crime and that the victim or victim's representative brings, within five years of the date of the establishment of the escrow account, a civil action for damages resulting from the crime, or, has already obtained a judgment for damages resulting from the crime in a court of competent jurisdiction **[within five years of the date of the establishment of the escrow account]** and files notice of such action with the board and recovers a money judgment for damages resulting from the crime against the person or an agent, assignee, beneficiary, conservator, executor, guardian, representative, relative, friend, associate or conspirator of a person convicted or accused of a crime in this State.

4. The board, if the victim or victims are identifiable, shall notify these persons that such escrow moneys are available to satisfy money judgments under this act. The board, if the victim or victims are not identifiable or cannot be located, shall, at least once every six months for five years from the date it receives these moneys, cause to have published a legal notice in newspapers of general circulation in each county of the State advising that such escrow moneys are available to satisfy money judgments under this act.

5. a. If a person is not convicted of committing a crime, the board shall immediately pay over all moneys in the escrow account to the person, subject to any outstanding or pending liens or judgments. If the person is convicted, the board shall pay over the moneys according to the following priorities:

(1) Civil judgments of the victim or the victim's representative, which shall be apportioned among these judgment holders if there is insufficient moneys in the account to pay each judgment in full.

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Any money received by the victim or the victim's representative as a result of a judgment in a prior civil action relating to the crime shall be set-off against any amount due to be paid from the fund.

(2) Restitution ordered by the court pursuant to the New Jersey Code of Criminal Justice.

(3) Other judgment creditors of the accused.

(4) Reasonable costs incurred by the Violent Crimes Compensation Board in connection with the administration of the provisions of this act.

(5) The remainder of the moneys in the escrow account shall be paid to the Violent Crimes Compensation Board for use in satisfying claims filed pursuant to the "Criminal Injuries Compensation Act of 1971," P. L. 1971, c. 317 (C. 52:4B-1 et seq.). If there is a dispute as to the respective priority of or the apportionment due a judgment creditor the board shall apply to Superior Court for a declaratory judgment with proper notice given to all parties.

b. No payment shall be made pursuant to subsection a. (5) until five years have elapsed from establishment of the escrow account or final disposition of any action brought by any victim or victim's representative, pursuant to this act.

c. Moneys in the escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in subsection a.

6. Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five year period provided for in this act shall not begin to run until an escrow account has been established.

7. Notwithstanding the foregoing provisions of this act, the board shall make payments from an escrow account to a person accused of crime upon the order of a court of competent jurisdiction after a showing by the person that a reasonable amount of these moneys

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shall be used for the exclusive purpose of retaining legal representation at any **state** **stage** of the criminal proceedings against the person, including the appeals process.

8. Any action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this act shall be void as against the public policy of this State.

9. This act shall take effect immediately.

22A:1-4. Fees and mileage of witnesses and others

Witnesses and others hereinafter mentioned shall be entitled to the following fees:

Each witness attending any of the following, in his own county, per day of attendance, \$2.00; a court; a joint committee of the Legislature, a standing committee of either house or any special committee, which shall have been, by resolution, directed to enter upon any investigation or inquiry, the purpose of which shall necessitate sending for persons and papers and the examination of witnesses; a commissioner or commissioners; a master; a referee; an arbitrator;

an officer taking a deposition; or any proceeding issuing out of any court.

Each witness so attending from a foreign county, at the rate of \$2.00 a day, together with, for each day of attendance, an allowance of \$2.00 for every 30 miles of

travel in going to the place of attendance from his place of residence and in returning.

For the Secretary of State, or any clerk attending on subpoena, with records, wills or other written evidence, at the rate of \$2.00 a day, and mileage as aforesaid.

2C:28-5. Tampering With Witnesses and Informants; Retaliation Against Them

a. **Tampering.** A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, he knowingly attempts to induce or otherwise cause a witness or informant to:

(1) Testify or inform falsely;

(2) Withhold any testimony, information, document or thing;

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(3) Elude legal process summoning him to testify or supply evidence; or

(4) Absent himself from any proceeding or investigation to which he has been legally summoned.

The offense is a crime of the second degree if the actor employs force. Otherwise it is a crime of the third degree. Privileged communications may not be used as evidence in any prosecution for violations of paragraphs (2), (3) or (4).

b. **Retaliation against witness or informant.** A person commits a crime of the fourth degree if he harms another by an unlawful act with purpose to retaliate for or on account of the service of another as a witness or informant.

c. **Witness or informant taking bribe.** A person commits a crime of the third degree if he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsections a. (1) through (4) of this section.

2C:29-3. Hindering apprehension or prosecution

a. A person commits an offense if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for an offense he:

(3) Suppresses, by way of concealment or destruction; any evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

(5) Prevents or obstructs, by means of force, intimidation or deception, any one from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

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The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

b. A person commits an offense if, with purpose to hinder his own apprehension, prosecution, conviction or punishment, he:

(1) Suppresses, by way of concealment or destruction, any evidence of the crime or tampers with a document or other source of information, regardless of its admissibility in evidence, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(2) Prevents or obstructs by means of force or intimidation anyone from performing an act which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(3) Prevents or obstructs by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(4) Volunteers false information to a law enforcement officer.

The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

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27th N. J. S. 2C:44-6 is amended to read as follows:

2C:44-6. Procedure on Sentence; Presentence Investigation and Report. a. The court shall not impose sentence without first ordering a presentence investigation of the defendant and according due consideration to a written report of such investigation when required by Rules of Court. The court may order a presentence investigation in any other case.

b. The presentence investigation shall include an analysis of the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, family situation, personal habits, the disposition of any charge made against any codefendants and may include a report on his physical and mental condition and any other matters that the probation officer deems relevant or the court directs to be included. The presentence report may also include a statement by the victim of the offense for which the defendant is being sentenced. The statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the effect of the crime upon the victim's family. The probation department shall notify the victim of his right to make a statement for inclusion in the presentence report if the victim so desires. Any such statement shall be made within 20 days of notification by the probation department.

The presentence report shall specifically include an assessment of the gravity and seriousness of harm inflicted on the victim including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability,

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ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance.

* * *

CHAPTER 65

DISPOSITION OF STOLEN PROPERTY AND
DOCUMENTARY EXHIBITS

Section

- 2C:65-1. Procedure to be followed by law enforcement agencies when stolen property is taken into custody.
2C:65-2. Release of stolen property prior to final determination of proceeding.
2C:65-3. Disposition of stolen property after final determination of proceeding.
2C:65-4. Disposition of documentary exhibits.

2C:65-1. Procedure to be followed by law enforcement agencies when stolen property is taken into custody

When any article of property alleged to be stolen comes into the custody of a law enforcement agency, that agency shall enter in a suitable book a description of that article and shall attach a number to each article, and make a corresponding entry thereof. The agency shall also make and retain a complete photographic record of the property. The photographic record, upon proper authentication, may be introduced as evidence in any court in lieu of the property.

2C:65-2. Release of stolen property prior to final determination of proceeding

a. A law enforcement agency, upon satisfactory proof of ownership of property held pursuant to this section, and upon presentation of proper personal identification, may release the property to the person presenting such proof pursuant to the provisions of subsection b. The release shall be without prejudice to the State or to the person from whom custody of the property was taken or to any person who may have a claim

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against the property. Any such delivery shall be noted in the book required by 2C:65-1. The person to whom the property is delivered shall sign a sworn declaration of ownership which shall be retained by the agency.

b. Nothing in this section shall prohibit a law enforcement agency from immediately returning property to its rightful owner where the agency is satisfied that there is no colorable dispute as to ownership; provided, however, that where the law enforcement agency has reason to believe that there is a dispute concerning ownership of property, or if the person from whom custody of the property was taken shall claim ownership, or if any other person shall claim ownership, the property shall not be released to any person claiming it until a hearing has been held pursuant to subsection c.

c. The court having jurisdiction over the case in which the stolen property is involved, upon application by the person from whom possession was taken, or the person claiming ownership, shall review the matter and order the property to be delivered to the person claiming ownership, or to be retained by the law enforcement agency upon a finding that the person claiming ownership of the property is not entitled thereto.

2C:65-3. Disposition of stolen property after final determination of proceeding

a. After final determination of any action or proceeding, the court, on application of the person claiming ownership, or an agent designated in writing by the person, may order all property, other than documentary exhibits, to be delivered to the person.

b. After the expiration of 6 months from the final determination of the action, if the person entitled to the property is unknown, or fails to apply, the court in which the case was tried, upon application of the law enforcement agency in possession of the property, shall make an order specifying what property may be released from the custody of the agency without prejudice to the State. Upon receipt of the order, the clerk of the court shall transfer the property for disposal at public sale to the State, county or municipality, whichever was the prosecuting authority. The property shall not be transferred where it consists of money or currency, but it shall be deposited immediately in the general fund of either the State, county or municipality.

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2C:65-4. Disposition of documentary exhibits

No exhibit shall be destroyed or otherwise disposed of until 60 days after the clerk of the court has posted a notice conspicuously in three places in the county, referring to the order for the disposition, describing briefly the exhibit, and indicating the date after which the exhibit will be destroyed or otherwise disposed of.

* * *

SENTENCING—VICTIM'S VULNERABILITY

CHAPTER 317

SENATE NO. 3154

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted May 23, 1983.

- *[An Act concerning the penalty for certain offenses committed against persons over the age of 60 years and amending sections 2C:43-6, 2C:43-7, and 2C:44-3 of the New Jersey Statutes.]*
- *An Act concerning sentencing criteria and presentence investigations and amending N. J. S. 2C:44-1 and N. J. S. 2C:44-6.*

d. The court shall not impose a mandatory sentence pursuant to [subsection] subsections c. or e. of this section, sections 2C:43-7c., 2C:43-7d., [or] 2C:44-3d., or 2C:44-3e. of the New Jersey Statutes, unless the ground therefor has been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish by a preponderance of the evidence that the weapon used or possessed was a firearm or that the offense was committed with respect to the person or property of a person over the age of 60 years, whichever is appropriate. In making its

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finding, the court shall take judicial notice of any evidence, testimony or information or information adduced at the trial, plea hearing, or other court proceedings and shall also consider the presentence report and any other relevant information.

e. Notwithstanding the provisions of any other law to the contrary and unless the person is being sentenced pursuant to subsection c. of this section, a person who has been convicted of violating section 2C:11-2, 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2, 2C:14-3a., 2C:15-1, 2C:18-2, 2C:20-3 if it constitutes a crime of the fourth degree or greater, or 2C:20-4 if it constitutes a crime of the fourth degree or greater, or 2C:20-5 of the New Jersey Statutes with respect to the person or property of a person over the age of 60 years, shall be sentenced to a term of imprisonment by the court. The term of imprisonment shall include at least the imposition of a minimum term, which shall not be less than one-third nor more than one-half of the sentence imposed by the court, during which the defendant shall be ineligible for parole.

For a second or subsequent conviction of an offense enumerated by this subsection with respect to the person or property of a person over the age of 60 years, as defined in N. J. S. 2C:44-3e., a person shall be sentenced by the court to an extended term as authorized by N. J. S. 2C:43-7d., notwithstanding that extended terms are ordinarily discretionary with the court.]*

*[2. N. J. S. 2C:43-7 is amended to read as follows:

2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

a. In the cases designated in section 2C:44-3, a person who has been convicted of a crime may be sentenced to an extended term of imprisonment, as follows:

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d. In the case of a person sentenced to an extended term pursuant to N. J. S. 2C:43-6e. and N. J. S. 2C:44-3e., the court shall impose a sentence within the ranges permitted by N. J. S. 2C:43-7a. (2), (3), (4), or (6) according to the nature of the offense for which the person is being sentenced. The sentence shall include a minimum term, which shall be not less than one-third nor more than one-half of the sentence imposed by the court, during which the defendant shall be ineligible for parole. If the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall be ineligible for parole.]*

*[3. N. J. S. 2C:44-3 is amended to read as follows:

2C:44-3. Criteria for Sentence of Extended Term of Imprisonment.

The court may, upon application of the prosecuting attorney, sentence a person who has been convicted of a crime of the first, second or third degree to an extended term of imprisonment if it finds one or more of the grounds specified in this section. If the grounds specified in subsection d. are found, and the person is being sentenced for commission of any of the offenses enumerated in 2C:43-6c., the court shall sentence the defendant to an extended term as required by 2C:43-6c. or if the grounds specified in subsection e. of this section are found, and the person is being sentenced for commission of any of the offenses enumerated in N. J. S. 2C:43-6e., the court shall sentence the defendant to an extended term as required by N. J. S. 2C:43-6e., and application by the prosecutor shall not be required. The finding of the court shall be incorporated in the record.

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e. Subsequent offender against persons over the age of 60 years. The defendant is at least 18 years of age and previously has been convicted of violating any of the following sections of the New Jersey Statutes with respect to the person or property of a person over the age of 60 years: 2C:11-2, 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2, 2C:14-3a., 2C:15-1, 2C:18-2, 2C:20-3 if it constitutes a crime of the fourth degree or greater, 2C:20-4 if it constitutes a crime of the fourth degree or greater, or 2C:30-5; or previously has been convicted of an offense under Title 2A of the New Jersey Statutes that is the equivalent of any of the offenses enumerated in this subsection, with respect to the person or property of a person over the age of 60 years.]*

2C:44-1. Criteria for Withholding or Imposing Sentence of Imprisonment. a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court [may properly] shall consider the following aggravating circumstances:

(1) The nature and circumstances of the offense, and the role of the actor therein, including whether or not it was committed in an especially heinous, cruel, or depraved manner;

(2) The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance;

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CHAPTER 25

DOMESTIC VIOLENCE

Section

- 2C:25-1. Short title.
2C:25-2. Legislative findings and declarations.
2C:25-3. Definitions.
2C:25-4. Law enforcement officers; training; domestic crises teams; dispatch to scene of incident of domestic violence.
2C:25-5. Arrests.
2C:25-6. Immunity from liability of law enforcement officer for arrest.
2C:25-7. Notice to victim; contents.
2C:25-8. Domestic violence offense report; completion by law enforcement officer; forwarding information; contents; annual report; information on orders in force or prior incidents.
2C:25-9. Duties of court.
2C:25-10. Release from custody before trial; order of limits on contact with victim.
2C:25-11. Conviction of crime or offense involving domestic violence; restriction on contact with victim; professional counseling.
2C:25-12. Complaint by victim; jurisdiction; filing.
2C:25-13. Hearing; orders for relief; emergency relief.
2C:25-14. Temporary restraining order; jurisdiction; duration.
2C:25-15. Accompaniment to residence for removal of personal belongings; violations of orders; contempt.
2C:25-16. Uniform record of requests for orders; annual report; confidentiality.

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2C:25-1. Short title

This act shall be known and may be cited as the "Prevention of Domestic Violence Act."

L.1981, c. 426, § 1.

Historical Note

Section 19 of L.1981, c. 426, as amended Jan. 9, 1982, provides:
"This act shall take effect 90 days following enactment."

Title of Act:
An Act concerning the prevention of domestic violence, supplementing Title 2A of the New Jersey Statutes, amending N.J.S. 2A:4-18 and repealing P.L.1981, c. 200. L.1981, c. 426.

2C:25-2. Legislative findings and declarations

The Legislature finds and declares that domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spouse abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.

The Legislature further finds and declares that even though many of the existing criminal statutes are applicable to acts of domestic violence, previous societal attitudes concerning domestic violence have affected the response of our law enforcement and judicial systems, resulting in these acts receiving different treatment from similar crimes when they occur in a domestic context. The Legislature finds that battered adults presently experience substantial difficulty in gaining access to protection from the judicial system, particularly due to that system's inability to generate a prompt response in an emergency situation.

It is the intent of the Legislature to stress that the primary duty of a law enforcement officer when responding to a domestic violence call is to enforce the laws allegedly violated and to protect the victim. It is further intended that the official response to domestic violence shall communicate the attitude that violent behavior will not be excused or tolerated, and shall make clear the fact that the existing criminal laws and civil remedies

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created under this act will be enforced without regard to the fact that the violence grows out of a domestic situation.
L.1981, c. 426, § 2.

Historical Note

Effective date, see Historical Note
under § 2C:25-1.

2C:25-3. Definitions

As used in this act:

a. "Cohabitants" means emancipated minors or persons 18 years of age or older of the opposite sex who have resided together or who currently are residing in the same living quarters, persons who together are the parents of one or more children, regardless of their marital status or whether they have lived together at any time, or persons 18 years of age or older who are related by blood and who currently are residing in the same living quarters.

b. "Domestic violence" means the occurrence of one or more of the following acts between cohabitants:

- (1) AssaultN.J.S. 2C:12-1
- (2) KidnappingN.J.S. 2C:13-1
- (3) Criminal restraintN.J.S. 2C:13-2
- (4) False imprisonmentN.J.S. 2C:13-3
- (5) Sexual assaultN.J.S. 2C:14-2
- (6) Criminal sexual contactN.J.S. 2C:14-3
- (7) LewdnessN.J.S. 2C:14-4
- (8) Criminal mischiefN.J.S. 2C:17-3
- (9) BurglaryN.J.S. 2C:18-2
- (10) HarassmentN.J.S. 2C:33-4

c. "Law enforcement agency" means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

d. "Law enforcement officer" means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

e. "Victim" means a cohabitant who alleges having been subjected to domestic violence.

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2C:25-7. Notice to victim; contents

A law enforcement officer shall disseminate to the victim the following notice, which shall be written in both English and Spanish:

"You have the right to go to the juvenile and domestic relations court and file a complaint requesting relief including but not limited to the following: an order restraining your attacker from abusing you or directing your attacker to leave your household. You may request that the clerk of the court assist you in applying for this order. You also have the right to go to court and file a criminal complaint.

On weekends, holidays and other times when the courts are closed, you may go to the municipal court for an emergency order granting the relief set forth above."

2C:25-8. Domestic violence offense report; completion by law enforcement officer; forwarding information; contents; annual report; information on orders in force or prior incidents

a. It shall be the duty of a law enforcement officer who responds to a domestic violence call to complete a domestic violence offense report. All information contained in the domestic violence offense report shall be forwarded to the State bureau of records and identification in the Division of State Police in the Department of Law and Public Safety.

b. The domestic violence offense report shall be on a form prescribed by the supervisor of the State bureau of records and identification which shall include, but not be limited to, the following information:

- (1) The relationship of the parties;
- (2) The sex of the parties;
- (3) The time and date of the incident;
- (4) The number of domestic violence calls investigated;

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(5) Whether children were involved, or whether the alleged act of domestic violence had been committed in the presence of children;

(6) The type and extent of abuse;

(7) The number and type of weapons involved;

(8) The action taken by the law enforcement officer;

(9) The existence of any prior court orders issued pursuant to sections 10, 11, 13 or 14 of this act¹ concerning the parties; and

(10) Any other data that may be necessary for a complete analysis of all circumstances leading to the alleged incident of domestic violence.

c. It shall be the duty of the Superintendent of the State Police with the assistance of the Division of Systems and Communications in the Department of Law and Public Safety to compile and report annually for a period of 5 years to the Governor, the Legislature and the Advisory Council on Shelters for Victims of Domestic Violence on the tabulated data from the domestic violence offense reports.

L.1981, c. 426, § 8. Amended by L.1982, c. 82, § 5, eff. July 23, 1982.

¹ Sections 2C:25-10, 2C:25-11, 2C:25-13 or 2C:25-14.

Historical Note

Effective date, see Historical Note under § 2C:25-1.

The 1982 amendment deleted "the appropriate county bureau of identification and" after "forwarded to" in the second sentence of subsec. a.; inserted "records and" after "bureau of" in the second sentence of subsec. a. and in the introductory clause of subsec. b.; substituted "and date of the incident" for "the complaint was received" in item (3), and "The number of domestic calls investigated" in item (4) of subsec. b.; deleted "amount of time involved in handling the case and the" in item (8), and substituted "existence of any

prior court orders" for "effective date and terms of an order" in item (9) of subsec. b.; inserted "with the assistance of the Division of Systems and Communications in the Department of Law and Public Safety" in subsec. c.; deleted the former second and third sentences of subsec. c. which allowed a request to the legislature to continue the reports for 5 years and stated the contents of the report; and deleted former subsec. d. which related to informing officers at scene of incident of domestic violence of orders in force or prior incidents involving the parties.

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2C:25-9. Duties of court

The court in a criminal complaint arising from domestic violence actions:

a. Shall not dismiss any charge or delay disposition of a case because of concurrent dissolution of a marriage, other civil proceedings, or because the victim has left the residence to avoid further incidents of domestic violence;

b. Shall not require proof that either party is seeking a dissolution of a marriage prior to institution of criminal proceedings

c. Shall waive any requirement that the victim's location be disclosed to any person.

L.1981, c. 426, § 9. Amended by L.1982, c. 82 § 6, eff. July 23, 1982.

Historical Note

Effective date, see Historical Note under § 2C:25-1.

The 1982 amendment inserted "a criminal complaint arising from" in the introductory clause.

2C:25-10. Release from custody before trial; order of limits on contact with victim

a. When a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may as a condition of release issue an order prohibiting the defendant from having any contact with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or business, or school, and from harassing the victim or victim's relatives in any way.

b. The written court order releasing the defendant shall contain the court's directives restricting the defendant's ability to have contact with the victim or the victim's relatives. The clerk of the court or other person designated by the court shall provide a copy of this order to the victim forthwith.

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2C:25-11. Conviction of crime or offense involving domestic violence; restriction on contact with victim; professional counseling

When a defendant is found guilty of a crime or offense involving domestic violence and a condition of sentence restricts the defendant's ability to have contact with the victim, that condition shall be recorded in an order of the court and a written copy of that order shall be provided to the victim by the clerk of the court or other person designated by the court. In addition to restricting a defendant's ability to have contact with the victim, the court may require the defendant to receive professional counseling from either a private source or a source appointed by the court, and the court may require the defendant to provide documentation of attendance at the professional counseling.

L.1981, c. 426, § 11.

Historical Note

Effective date, see Historical Note under § 2C:25-1.

Cross References

Information provided at scene of incident, establishment of procedures, see § 2C:25-8.

Offense report contents, see § 2C:25-8.

Removal of personal belongings, see § 2C:25-15.

Requests for orders, record, see § 2C:25-16.

Violation of order,

Arrest, see § 2C:25-5

Contempt, see § 2C:25-15.

2C:25-12. Complaint by victim; jurisdiction; filing

a. A victim may file a complaint alleging the commission of an act of domestic violence with the juvenile and domestic relations court in conformity with the rules of court. The court in domestic violence actions shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.

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b. The juvenile and domestic relations court shall waive any requirement that the petitioner's place of residence appear on the complaint.

c. The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.

d. Summons and complaint forms shall be readily available at the clerk's office and at the municipal courts.

L.1981, c. 426, § 12.

Historical Note

Effective date, see Historical Note under § 2C:25-1.

Cross References

Reference to juvenile and domestic relations court deemed to refer to family court, see § 2A:4-3.2.

2C:25-13. Hearing; orders for relief; emergency relief

a. A hearing shall be held in juvenile and domestic relations court within 10 days of the filing of a complaint pursuant to section 12 of this act. A copy of the complaint shall be served on the defendant in conformity with the rules of court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c. 426 (C. 2C:25 et seq.) is filed, notice of any hearing on the complaint shall be given to the prosecuting attorney so that he may be heard with respect to a stay of that proceeding pending disposition of the criminal proceeding. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

(1) The previous history of domestic violence between the cohabitants including threats, harassment and physical abuse;

(2) The existence of immediate danger to person or property;

(3) The financial circumstances of the cohabitants;

(4) The best interests of the victim and the child;

(5) In determining custody and visitation the protection of the victim's safety; and

(6) Whether the application was made in a reasonable time after the alleged act of domestic violence occurred.

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b. At the hearing the juvenile and domestic relations court may issue an order granting any or all of the following relief:

(1) An order prohibiting the defendant from having contact with the victim including, but not limited to, restraining the defendant from entering the plaintiff's residence, place of employment or business, or school. The court shall prohibit the defendant from harassing the plaintiff or plaintiff's relatives in any way;

(2) An order granting possession to the plaintiff of the residence to the exclusion of the defendant when the residence or household is jointly owned or leased by the parties provided that this issue has not been resolved nor is being litigated between the parties in another action. The court may amend its order at any time upon petition by either party;

(3) When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is sole owner or lessee of the residence, an order granting possession to the plaintiff of the residence or household to the exclusion of the defendant may be issued or, upon consent of the parties, allowing the defendant to provide suitable, alternate housing provided that this issue has not been resolved nor is being litigated between the parties in another action;

(4) When the parties are married, sole ownership in the name of the defendant of the real property constituting the residence of the parties shall not bar the court from entering an order restraining the defendant from entering the marital residence. No order shall affect any interest in the residence held by either party;

(5) An order determining child support, child custody, or establishing visitation rights, provided that these issues have not been resolved nor are being litigated between the parties in another action. The court shall protect the safety of the plaintiff by specifying a place of visitation away from the plaintiff or take any other appropriate precaution necessary to protect the safety and well-being of the plaintiff and minor children;

(6) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. Compensatory losses shall include, but not be limited to, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, reasonable attorney's fees and compensation for pain and suffering. Where ap-

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propriate, punitive damages may be awarded in addition to compensatory damages;

(7) An order requiring the defendant to receive professional counseling from either a private source or a source appointed by the court and, in that event, at the court's discretion requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling.

c. In addition to the relief sought in subsection b. of this section a plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. The juvenile and domestic relations court may enter ex parte orders when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought. A hearing shall be held on an ex parte order within 10 days of the issuance thereof.

Whenever emergency relief is sought by the plaintiff the clerk of the court or other person designated by the court shall immediately transmit the complaint to the presiding juvenile and domestic relations court judge regarding the emergency relief sought by the close of business on the day relief is sought. An order granting emergency relief shall immediately be forwarded to the sheriff for immediate service of the order for emergency relief upon the defendant.

d. An order for emergency relief shall be granted upon good cause shown.

e. Emergency relief may constitute all relief available under this act together with any other appropriate relief. A temporary restraining order shall remain in effect until further action by the court.

f. Notice of orders issued pursuant to this section shall be sent by the clerk of the juvenile and domestic relations court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

g. All pleadings, process, and other orders filed pursuant to this act shall be served upon the defendant in accordance with the rules of court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service.

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2C:25-14. Temporary restraining order; jurisdiction; duration

a. On weekends, holidays and other times when the court is closed a juvenile and domestic relations court judge or a municipal court judge shall be assigned to issue a temporary restraining order pursuant to this act. The order shall be made by the judge of the jurisdiction where the alleged domestic violence occurred or the jurisdiction where the plaintiff resides using the same procedure now available on other emergent applications.

b. If it appears that the plaintiff is in danger of domestic violence, the municipal court judge shall, upon consideration of the plaintiff's domestic violence complaint, order emergency relief including ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith. An order granting emergency relief, together with all pleadings, process and other orders, shall immediately be forwarded to the sheriff for immediate service of the order for emergency relief upon the defendant.

c. An order for emergency relief shall be granted upon good cause shown and shall remain in effect until the juvenile and domestic relations court issues a final order. The juvenile and domestic relations court shall hold a hearing on an emergency order within 10 days. Any order hereunder may be dissolved or modified on 24 hour's notice or immediately appealable¹ for a plenary hearing de novo not on the record before the juvenile and domestic relations court of the county in which the plaintiff resides.

d. Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence together with any other appropriate relief.

e. The judge may permit the defendant to return to the scene of the domestic violence to pick up personal belongings and effects but may by order restrict the time and duration and provide for police supervision of such visit.

f. Notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

g. An application for a temporary restraining order pursuant to this section shall, upon filing and issuance, be immediately forwarded to the clerk of the juvenile and domestic relations court of the plaintiff's vicinage for a final order.

L.1981, c. 426, § 14. Amended by L.1982, c. 82, § 8, eff. July 23, 1982.

¹ So in enrolled bill.

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2C:25-15. Accompaniment to residence for removal of personal belongings; violations of orders; contempt

a. Upon the issuance of an order pursuant to sections 10, 11, 13 or 14 of this act¹ the court may order a law enforcement officer to accompany either party to the residence to supervise the removal of personal belongings in order to insure the personal safety of the plaintiff.

b. Violation of an order issued pursuant to sections 10, 11, 13 or 14 of this act shall constitute contempt and each order shall so state.

L.1981, c. 426, § 15.

¹ Sections 2C:25-10, 2C:25-11, 2C:25-13 or 2C:25-14.

Historical Note

Effective date, see Historical Note under § 2C:25-1.

2C:25-16. Uniform record of requests for orders; annual report; confidentiality

The Administrative Office of the Courts shall maintain a uniform record of all requests for orders issued pursuant to section 10, 11, 13, or 14 of this act. The record shall include the following information:

- The number of complaints filed by the parties;
- The sex of the parties;
- The relationship of the parties;
- (Deleted by amendment, P.L.1982, c. 82.)
- The relief sought;
- The nature of the relief granted including but not limited to, custody and child support;
- The effective date and terms of each order issued; and
- The number of orders issued.

It shall be the duty of the Director of the Administrative Office of the Courts to compile and report annually to the Governor, the Legislature and the Advisory Council on Shelters for Victims of Domestic Violence on the data tabulated from the records on these orders for a period of 5 years. The Advisory Council on Shelters for Victims of Domestic Violence may request the Legislature continue the reports for another 5 years.

All records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.

CHAPTER 14

SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE

Section	
30:14-1.	Purpose.
30:14-2.	Title of Act.
30:14-3.	Department of Human Services; operation of shelters.
30:14-4.	Advisory council on shelter for victims of domestic violence.
30:14-5.	Standards for shelters.
30:14-6.	Commissioner of human services; duties.
30:14-7.	Facilities of shelter.
30:14-8.	Services of shelter.
30:14-9.	Services from other agencies.
30:14-10.	Staff members; bilingual personnel.
30:14-11.	Funding.
30:14-12.	Federal funds.
30:14-13.	Confidentiality for persons seeking shelter services.
30:14-14.	Minors; release of custody.

Cross References

Permissible use in residential districts, see § 40:55D-68.1 et seq.

Library References

Asylums and Institutional Care Facilities § 1 et seq. C.J.S. Asylums and Institutional Care Facilities §§ 2, 3.

30:14-1. Purpose

The Legislature finds and declares that there is a present and growing need to develop services to protect victims of domestic violence. It is the purpose of this act to encourage the development of shelters for these victims and their children where they may obtain necessary services, including shelter, counseling and other social services.

30:14-3. Department of Human Services; operation of shelters

The Department of Human Services shall provide services to those public or private agencies, which meet the standards set forth in this act, to operate shelters for victims of domestic violence. Priority for the allocation of services shall be to viable, existing programs which have successfully performed the delivery of shelter and other services to victims of domestic violence prior to the effective date of this act.

L.1979, c. 337, § 3, eff. Jan. 22, 1980.

30:14-4. Advisory council on shelters for victims of domestic violence

There is created an Advisory Council on Shelters for Victims of Domestic Violence which shall consist of 10 members: the Director of the Division on Women, the Director of the Division of Youth and Family Services, the Director of the Division of Public Welfare, the Commissioner of the Department of Education, the Executive Director of the State Law Enforcement Planning Agency, or their designees, and one representative of Legal Services of New Jersey, one former domestic violence shelter resident, and three representatives of shelters for domestic violence programs to be appointed by the Governor, without regard to political affiliation.

L.1979, c. 337, § 4, eff. Jan. 22, 1980.

30:14-5. Standards for shelters

The Commissioner of Human Services, in consultation with the advisory council, shall establish standards to be met by those shelters applying for services to assure the availability of specialized personnel, resources and equipment necessary to enable such shelters to carry out the purposes of this act. Upon establishment of a program of services, the commissioner in consultation with the advisory council shall periodically appraise its performance to determine whether the purposes of this act are being met.

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30:14-6. Commissioner of human services; duties

The Commissioner of Human Services, in consultation with the advisory council, shall:

- a. Provide technical assistance to help public and private agencies to qualify as operators of shelters and to obtain State and Federal funds for the establishment and maintenance of shelters.
- b. Suggest the types of innovative strategies in services which will ameliorate and reduce the problems of domestic violence.
- c. Foster cooperation and communication among the providers of services to victims of domestic violence to promote agreement among providers concerning the treatment needs of those victims.
- d. Provide guidelines for the training and use of volunteers in the delivery of services.

L.1979, c. 337, § 6, eff. Jan. 22, 1980.

30:14-7. Facilities of shelter

A shelter shall provide a residential area which provides safe refuge for victims of domestic violence. A shelter shall also provide a day program or drop-in center, located at the shelter site or in a separate facility, which can assist victims of domestic violence who have not yet made the decision to leave their homes, or who have found other shelter but who nevertheless have a need for the services provided at the shelter.

L.1979, c. 337, § 7, eff. Jan. 22, 1980.

30:14-8. Services of shelter

A shelter shall arrange for the provision of the following services to victims of domestic violence:

- a. Emergency medical care.
- b. Emergency legal assistance.
- c. Marriage and family counseling and emergency psychological support and counseling, as requested.
- d. Information regarding education, job counseling and training programs, housing, welfare and other available social

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services accomplished, wherever possible, by referrals to appropriate authorities or agencies.

L.1979, c. 337, § 8, eff. Jan. 22, 1980.

30:14-9. Services from other agencies

The shelter staff shall advocate the delivery of services from such agencies as county welfare departments and law enforcement and legal services agencies to those served by the shelters.

L.1979, c. 337, § 9, eff. Jan. 22, 1980.

30:14-10. Staff members; bilingual personnel

To the extent feasible, one or more of the shelter personnel shall be bilingual. An effort shall be made to recruit former victims of domestic assault as staff members.

L.1979, c. 337, § 10, eff. Jan. 22, 1980.

30:14-11. Funding

The governing body of any county or municipality may appropriate funds or in-kind donations for the support of any private, nonprofit shelter for victims of domestic violence meeting the standards established pursuant to section 5 of this act.¹

L.1979, c. 337, § 11, eff. Jan. 22, 1980.

¹ Section 30:14-5.

30:14-12. Federal funds

The commissioner shall seek and make use of any funds which are available from Federal or other sources in order to augment any State funds appropriated for the purposes of this program.

L.1979, c. 337, § 12, eff. Jan. 22, 1980.

30:14-13. Confidentiality for persons seeking shelter services

Information which may reveal the identity or location of a person seeking shelter services shall not be disclosed, except as otherwise specifically required by law or with the consent of the person seeking shelter services.

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30:14-14. Minors; release of custody

No shelter providing care for a minor who was in the actual custody of a parent at the time the parent applied for shelter services shall release the minor to any person, including the child's other parent, without the consent of the parent who sought shelter, except as may be otherwise required by court order.

RAPE COUNSELORS—PRIVILEGED COMMUNICATIONS

CHAPTER 116^a

ASSEMBLY NO. 1500

EXPLANATION—Matter enclosed in bold-faced brackets [b] in the above bill is not enacted and is intended to be omitted in the law.
Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted June 17, 1982.

**—Senate amendment adopted December 13, 1982.

AN ACT concerning the confidentiality of communications with sexual assault counselors and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

45. N.J.S.A. 48:7-16 note.

46. N.J.S.A. 2A:84A-22.11, 2A:84A-22.12.

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1. As used in this act:

a. "Confidential communication" means information transmitted between a victim of sexual assault and a sexual assault counselor in the course of that relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than those who are present to further the interests of the victim in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or for the accomplishment of the purposes for which the sexual assault counselor is consulted. "Confidential communication" includes **any advice, report or working paper given or made in the course of the consultation and** all information received by the sexual assault counselor in the course of that relationship.

b. "Rape crisis center" means any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

c. "Sexual assault counselor" means a person engaged in any office, institution or center defined as a rape crisis center by this act, who **[are]* *has** undergone 40 hours of training and is under the control of a direct services supervisor of a rape crisis center and **[whose]* *who has a** primary function **[is the]* *of** rendering **[of]** advice, counseling or assist^a**[ance]* *ing** victims of sexual assault.

d. "Victim" means a person who consults a sexual counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by a sexual assault.

2. **[A]* *Subject to Rule 37 of the Rules of Evidence, a** sexual assault counselor has a privilege not to be examined as a witness in any civil or criminal proceeding with regard to any confidential communication **[made by a victim to the counselor or*

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as to any advice, report or working paper given or made in the course of the consultation without the] * *. The privilege shall be claimed by the counselor unless otherwise instructed by* prior written consent of the victim. *When a victim is incompetent or deceased, consent to disclosure may be given by the guardian, executor or administrator.* **The privilege may be knowingly waived by a juvenile. In any instance where the juvenile is, in the opinion of the judge, incapable of knowing consent, the parent or guardian of the juvenile may waive the privilege on behalf of the juvenile, provided that the parent or guardian is not the defendant and does not have a relationship with the defendant such that he has an interest in the outcome of the proceeding.**

3. This act shall take effect immediately.

Category	Citation
1. Victim Compensation Program	31-22-1 et seq.
1.1 Responsible Agency	31-22-4
1.2 Eligible Claimants	31-22-7, 31-22-10, 31-22-11
1.3 Losses Covered	31-22-9
1.4 Minimum and Maximum Award	31-22-14(B)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	31-22-14(A)
1.7 Filing of Claim - Time Limit	31-22-14(A)
1.8 Emergency Award	
1.9 Funding	31-22-21
2. Restitution	31-17-1 et seq.
2.1 Sentencing Option	31-20-6A, 31-21-10(D)(7)
2.2 Mandatory Condition of Probation	31-17-1(B)
2.3 Mandatory Condition of Parole	31-17-1(B)
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	31-17-1(C),(G)
3. Escrow and Forfeiture of Offender Profits	31-22-22
4. Witness Fees	38-6-4, 10-8-4(A)
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	30-24-3(C)
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	31-21-25(E)
7.8 of Release of Offender	
7.9 of Escape of Offender	33-2-48
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	31-17-1(D) (impact on victim considered in creating restitution plan)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	29-1-14
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	29-11-5
13.2 Special Programs	29-11-1 et seq.
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	30-9-17
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	31-22-18 (victim compensation records)
15.4 Sexual Assault Counselor Privilege	

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New Mexico Statutes Annotated

ARTICLE 22

Crime Victims Reparations

Sec.

- 31-22-1. (Effective until July 1, 1985) Short title.
31-22-1. (Repealed effective July 1, 1985.)
31-22-2. (Effective until July 1, 1985) Purpose.
31-22-2. (Repealed effective July 1, 1985.)
31-22-3. (Effective until July 1, 1985) Definitions.
31-22-3. (Repealed effective July 1, 1985.)
31-22-4. (Effective until July 1, 1985) Crime victims reparation commission created; membership; reimbursement.
31-22-4. (Repealed effective July 1, 1985.)
31-22-5. (Effective until July 1, 1985) Claims; review; hearings and evidence.
31-22-5. (Repealed effective July 1, 1985.)
31-22-6. (Effective until July 1, 1985) Medical examination; attorneys' fees; penalty.
31-22-6. (Repealed effective July 1, 1985.)
31-22-7. (Effective until July 1, 1985) Eligibility for reparation.
31-22-7. (Repealed effective July 1, 1985.)
31-22-8. (Effective until July 1, 1985) Crimes enumerated.
31-22-8. (Repealed effective July 1, 1985.)
31-22-9. (Effective until July 1, 1985) Award of reparation.
31-22-9. (Repealed effective July 1, 1985.)
31-22-10. (Effective until July 1, 1985) Relationship to offender.
31-22-10. (Repealed effective July 1, 1985.)
31-22-11. (Effective until July 1, 1985) No award to certain confined persons.

Sec.

- 31-22-11. (Repealed effective July 1, 1985.)
31-22-12. (Effective until July 1, 1985) Recovery from offender.
31-22-12. (Repealed effective July 1, 1985.)
31-22-13. (Effective until July 1, 1985) Terms of order.
31-22-13. (Repealed effective July 1, 1985.)
31-22-14. (Effective until July 1, 1985) Limitations on award; collateral recovery.
31-22-14. (Repealed effective July 1, 1985.)
31-22-15. (Effective until July 1, 1985) Exemption from execution.
31-22-15. (Repealed effective July 1, 1985.)
31-22-16. (Effective until July 1, 1985) Survival or abatement.
31-22-16. (Repealed effective July 1, 1985.)
31-22-17. (Effective until July 1, 1985) Rule-making powers.
31-22-17. (Repealed effective July 1, 1985.)
31-22-18. (Effective until July 1, 1985) Confidentiality of records and reports.
31-22-18. (Repealed effective July 1, 1985.)
31-22-19. (Effective until July 1, 1985) Annual report.
31-22-19. (Repealed effective July 1, 1985.)
31-22-20. (Effective until July 1, 1985) Penalty.
31-22-20. (Repealed effective July 1, 1985.)
31-22-21. (Effective until July 1, 1985) Crime victims reparation fund created; purposes.
31-22-21. (Repealed effective July 1, 1985.)

31-22-2. Purpose.

The purpose of the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978] is to protect the citizens of New Mexico from the impact of crime and to promote a stronger criminal justice system through the encouragement of all citizens to cooperate with law enforcement efforts. Implementation of the Crime Victims Reparation Act will promote the public health, welfare and safety of the citizens of New Mexico.

31-22-3. Definitions.

As used in the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978]:

A. "child" means an unmarried person who is under the age of majority and includes a stepchild and an adopted child;

B. "collateral source" includes benefits for economic loss otherwise reparable under the Crime Victims Reparation Act which the victim or claimant has received, or which is readily available to him, from:

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- (1) the offender;
 - (2) social security, medicare and medicaid;
 - (3) workmen's compensation;
 - (4) wage continuation programs of any employer;
 - (5) proceeds of a contract of insurance payable to the victim; or
 - (6) a contract providing prepaid hospital and other health care services, or benefits for disability;
- C. "commission" means the crime victims reparation commission;
- D. "dependents" means those relatives of the deceased or disabled victim who are more than fifty percent dependent upon the victim's income at the time of his death or disability and includes the child of a victim born after his death or disability;
- E. "family relationship group" means any person related to another person within the fourth degree of consanguinity or affinity;
- F. "injury" means actual bodily harm or disfigurement and includes pregnancy and extreme mental distress. For the purposes of this subsection "extreme mental distress" means a substantial personal disorder of emotional processes, thought or cognition which impairs judgment, behavior or ability to cope with the ordinary demands of life;
- G. "relative" means a person's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, minor brother, minor sister, minor half-brother, minor half-sister or spouse's parents; and
- H. "victim" means a person domiciled in New Mexico who is injured or killed by any act or omission of any other person which is a crime enumerated in Section 9 [8] of the Crime Victims Reparation Act.

31-22-4. Crime victims reparation commission created; membership; reimbursement.

- A. There is created in the executive branch of government a "crime victims reparation commission," which shall consist of five members appointed by the governor for staggered terms of four years each. Not more than three of the members shall belong to the same political party. One of the members shall be an attorney licensed to practice law in the state, and one of the members shall be a physician licensed to practice medicine in the state. In making the initial appointments, the governor shall appoint three members for a term of two years each and two members for a term of four years each. Thereafter, appointments shall be for a term of four years. The governor may appoint a person to fill a vacancy for the balance of the unexpired term.
- B. The members of the commission shall annually elect from their membership a chairman and vice chairman.
- C. Members of the commission, while in the actual performance of their duties pursuant to the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978], shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1981].
- D. The commission may employ such staff as is necessary to perform its function.

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A. Where an application is made to the commission pursuant to the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978], the chairman of the commission shall assign the claim to himself or to another member of the commission. All claims arising from the injury or death of a person as a direct result of a single crime shall be considered together by a single commission member.

B. The commission member to whom such claim is assigned shall examine the papers filed in support of the claim and shall cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury or death upon which the claim is based and other benefits received or to be received.

C. The commission member to whom a claim is assigned may make his recommendation regarding the claim on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the commission member is unable to decide his recommendation upon the basis of the papers and report, he shall order a hearing.

D. At the hearing, the claimant and the commission's legal advisor shall be entitled to appear and be heard, and any other person may appear and be heard who has satisfied the commission member that he has a substantial interest in the proceedings. In any case in which the claimant is a child or is mentally incompetent, the application may be made on behalf of such claimant by his parent, guardian, custodian or any other person authorized to administer his estate.

E. Where any person is entitled to appear and be heard, that person may appear in person or by his attorney. All hearings shall be open to the public unless in a particular case the member of the commission assigned to the claim determines that the hearing or a portion thereof shall be held in private, having regard to the fact that the offender has not been convicted or in the interest of the victim of an alleged sexual offense.

F. Every person appearing under the provisions of this section shall have the right to produce evidence and to cross-examine witnesses. The commission member may receive in evidence any statement, document, information or matter that may, in his opinion, contribute to the functions of the hearing under the Crime Victims Reparation Act, whether or not such statement, document, information or other matter would be admissible in a court of law.

G. After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the commission member to whom the claim was assigned shall make a recommendation to the entire commission either granting an award or denying the claim.

H. The entire commission shall act upon the recommendation of the commission member. The commission, by majority vote, may affirm, increase, decrease or deny the award. No decision shall be valid unless a majority of the commission members are in agreement on the decision.

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31-22-6. Medical examination; attorneys' fees; penalty.

A. The commission may appoint an impartial physician, licensed in New Mexico, to examine any person making an application for reparation under the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978], and the fees for the examination shall be paid from funds appropriated for the commission's administrative expenses.

B. None of the appropriation in this act [31-22-1 to 31-22-21 NMSA 1978] shall be used to pay attorney fees either as part of or in addition to awards of reparation. In cases where no reparation is awarded, attorney fees shall not be paid.

31-22-7. Eligibility for reparation.

A. In the event any person is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the state after the effective date of the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978], which act or omission includes a crime enumerated in Section 9 [8] of that act, and upon application for reparation, the commission may award reparation in accordance with the Crime Victims Reparation Act:

- (1) to the victim;
- (2) in the case of the victim's death, to or for the benefit of any one or more of the deceased victim's dependents; or
- (3) any individual who voluntarily assumes funeral or medical expenses of the victim.

B. For the purpose of the Crime Victims Reparation Act, a person shall be deemed to have intentionally committed an act or omission notwithstanding that by reason of age, insanity, drunkenness or otherwise he was legally incapable of forming a criminal intent.

C. In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant. The commission shall consider the behavior of the victim and whether, because of provocation or otherwise, the victim bears responsibility for the crime that caused his injury or death and shall reduce the amount of reparation in accordance with its assessment of the degree of responsibility attributable to the victim.

D. An order may be made under this section whether or not any person is prosecuted for or convicted of a crime enumerated in Section 9 [8] of the Crime Victims Reparation Act, provided an arrest has been made or the act or omission constituting such a crime has been reported to the police in a reasonable time. No order may be made under this section unless the commission finds that:

- (1) the crime did occur;
- (2) the injury or death of the victim resulted from the crime; and
- (3) the claimant or victim fully cooperated with the appropriate law enforcement agencies.

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E. Upon application from the district attorney of the appropriate district, the commission may suspend proceedings under the Crime Victims Reparation Act for such period as it deems desirable on the ground that a prosecution for the crime has been commenced or is imminent.

31-22-8. (Effective until July 1, 1985) Crimes enumerated.

A. The crimes to which the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978] applies and for which reparation to victims may be made are the following enumerated offenses and all other offenses in which any enumerated offense is necessarily included:

- (1) arson resulting in bodily injury;
- (2) aggravated arson;
- (3) aggravated assault or aggravated battery;
- (4) dangerous use of explosives;
- (5) negligent use of a deadly weapon;
- (6) murder;
- (7) voluntary manslaughter;
- (8) involuntary manslaughter;
- (9) kidnapping;
- (10) criminal sexual penetration;
- (11) criminal sexual contact of a minor; and
- (12) homicide by vehicle or great bodily injury by vehicle.

B. No award shall be made for any loss or damage to property.

31-22-9. Award of reparation.

The commission may order payment of reparation for:

- A. expenses actually and reasonably incurred as a result of the victim's injury or death;
- B. loss to the victim of earning power as a result of total or partial incapacity; and
- C. any other pecuniary loss directly resulting from the victim's injury or death which the commission determines to be reasonable and proper.

31-22-10. Relationship to offender.

No reparation shall be awarded if the victim:

- A. is a relative of the offender;
- B. was a member of the offender's family relationship group; or
- C. was an accomplice of the offender.

31-22-11. No award to certain confined persons.

No award shall be made pursuant to the provisions of the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978] to a victim injured while confined in a county or municipal jail, penitentiary or other correctional facility.

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31-22-12. Recovery from offender.

Whenever an award of reparation is made pursuant to the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978], the state is, upon payment of the award, subrogated to the right of action of the victim or his dependents against the person responsible for the injury or death and may bring an action against such person for the amount of the reparation paid.

31-22-13. Terms of order.

Any order for the payment of reparation under the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978] may be made on such terms as the commission deems appropriate. The order may provide for apportionment of reparation or for the holding of reparation or any part thereof in trust and for the payment of reparation in a lump sum or in periodic installments. All such orders shall contain words clearly informing the claimant that all awards and orders for reparation under the Crime Victims Reparation Act are subject to the making of an appropriation by the legislature to pay the claim.

History: Laws 1981, ch. 325, § 13.
Effective dates. — Laws 1981, ch. 325, § 25,
makes the act effective on July 1, 1981.

(Effective July 1, 1985)

31-22-13. Repealed.

Repeals. — Laws 1981, ch. 325, § 26, repeals payment of reparations under the Crime Victims
31-22-13 NMSA 1978, relating to orders for the Reparation Act, effective July 1, 1985.

(Effective until July 1, 1985)

31-22-14. Limitations on award; collateral recovery.

A. No order for the payment of reparation shall be made unless application has been made within one year after the date of the injury or death and the injury or death was the result of a crime enumerated in Section 9 [8] of the Crime Victims Reparation Act which had been reported to the police within thirty days after its occurrence.

B. No award of reparation shall be in excess of twelve thousand five hundred dollars (\$12,500) per victim.

C. The commission shall deduct from any reparation awarded any payments received from a collateral source or from the United States, the state or any of its political subdivisions for injury or death subject to reparation under the Crime Victims Reparation

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Act [31-22-1 to 31-22-21 NMSA 1978]. Where the claimant receives an award of reparation from the commission and also receives payment as set forth in the preceding sentence for which no deduction was made, the claimant shall refund to the state the lesser of the amount of reparation paid or the sums not so deducted.

History: Laws 1981, ch. 325, § 14.
Effective dates. — Laws 1981, ch. 325, § 25,
makes the act effective on July 1, 1981.
Compiler's notes. — The reference to Section 9 of
the Crime Victims Reparation Act in Subsection A is

seemingly incorrect. The reference should be to Section 8 of the Crime Victims Reparation Act, which enumerates the crimes for which reparations to victims may be made. See 31-22-8 NMSA 1978.

(Effective July 1, 1985)

31-22-14. Repealed.

Repeals. — Laws 1981, ch. 325, § 26, repeals awards under the Crime Victims Reparation Act,
31-22-14 NMSA 1978, relating to limitations on effective July 1, 1985.

(Effective until July 1, 1985)

31-22-15. Exemption from execution.

No reparation payable under the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978] shall be, prior to its actual receipt by the victim or dependents entitled thereto or their legal representatives, assignable or subject to garnishment, execution, attachment or other process whatsoever, including process to satisfy an order or judgment for support or alimony.

History: Laws 1981, ch. 325, § 15.
Effective dates. — Laws 1981, ch. 325, § 25,
makes the act effective on July 1, 1981.

(Effective July 1, 1985)

31-22-15. Repealed.

Repeals. — Laws 1981, ch. 325, § 26, repeals cution of awards under the Crime Victims Reparation
31-22-15 NMSA 1978, relating to exemption from ex- Act, effective July 1, 1985.

(Effective until July 1, 1985)

31-22-16. Survival or abatement.

The rights to reparation created by the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978] are personal and shall not survive the death of the victim or dependents entitled thereto; provided that if such death occurs after an application for reparation has been filed with the commission, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate.

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31-22-17. Rule-making powers.

In performance of its functions the commission may adopt, amend and repeal rules and regulations in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], not inconsistent with the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978], prescribing procedures to be followed in the filing of applications and the proceedings under the Crime Victims Reparation Act and such other matters as the commission deems appropriate. Unless otherwise provided by law, no regulation affecting any person or agency outside the commission shall be adopted, amended or repealed without a public hearing on the proposed action before the commission or a hearing officer designated by them. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules and regulations shall be filed in accordance with the State Rules Act. In filing the rule or regulation with the state records center, the commission shall certify that the record contains arguments presented both for and against each rule or regulation promulgated.

History: Laws 1981, ch. 325, § 17.
Effective dates. — Laws 1981, ch. 325, § 25,
makes the act effective on July 1, 1981.

(Effective July 1, 1985)

31-22-17. Repealed.

Repeals. — Laws 1981, ch. 325, § 26, repeals 31-22-17 NMSA 1978, relating to rule-making powers of the crime victims reparation commission, effective July 1, 1985.

(Effective until July 1, 1985)

31-22-18. Confidentiality of records and reports.

Any record or report acquired by the commission, the confidentiality of which is protected by law, rule or regulation, shall be disclosed only under the same terms and conditions which protected its confidentiality prior to such acquisition.

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31-22-19. Annual report.

At least thirty days prior to the convening of each regular session of the legislature, the commission shall transmit to the governor, the department of finance and administration and the legislature a report of its activities under the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978], including the name of each applicant, a brief description of the facts in each case and the amount, if any, of reparation awarded. The department of finance and administration shall, within five days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount awarded and the amount of any judgments collected, to the senate finance committee and to the house of appropriations and finance committee, or any successor committees.

31-22-20. Penalty.

Any person who knowingly makes a false claim or a false statement in connection with a claim filed pursuant to the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978] shall be guilty of a fourth degree felony and for conviction thereof shall:

A. be punished by imprisonment in the state penitentiary for a determinate term of not less than one year nor more than five years, or by the payment of a fine not to exceed five thousand dollars (\$5,000) or both such imprisonment and fine in the discretion of the court; and

B. forfeit any reparation paid pursuant to the Crime Victims Reparation Act.

History: Laws 1981, ch. 325, § 20.
Effective dates. — Laws 1981, ch. 325, § 25,
makes the act effective on July 1, 1981.

(Effective July 1, 1985)

31-22-20. Repealed.

Repeals. — Laws 1981, ch. 325, § 26, repeals 31-22-20 NMSA 1978, relating to penalties under the Crime Victims Reparation Act, effective July 1, 1985.

(Effective until July 1, 1985)

31-22-21. Crime victims reparation fund created; purposes.

A. There is created the "crime victims reparation fund." The fund and any income from the fund shall be held in trust, deposited in a segregated account and invested by the department of finance and administration with the prior approval of the state board of finance.

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B. Money in the crime victims reparation fund may be expended by the commission to:

- (1) pay any award of reparation to victims made pursuant to the Crime Victims Reparation Act [31-22-1 to 31-22-21 NMSA 1978];
- (2) pay costs and expenses including staff salaries and expenses incurred in carrying out the provisions of the Crime Victims Reparation Act; and
- (3) contract with one or more attorneys or law firms on a per hour basis to provide legal services to the commission.

31-22-22. Distribution of money received as result of crime; escrow account.

A. Every firm, person, corporation, association or other legal entity contracting with a person or the representative or assignee of any person charged or convicted of a violent crime in this state, with respect to the reenactment of the crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation or live entertainment or with respect to the expression of the accused or convicted person's thoughts, feelings, opinions or emotions regarding the crime shall submit a copy of the contract to the crime victims reparation commission and pay to the commission any money that would otherwise by terms of such contract be owing to the accused or convicted person or his representatives. The commission shall deposit the money in an escrow account.

B. Money placed in an escrow account pursuant to this section shall be available to satisfy a civil judgment against the convicted person or the accused person, if eventually convicted of the crime, in favor of a victim of the crime if the court in which the civil judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

C. Upon dismissal of charges or acquittal of any accused person, the commission shall immediately pay over to the accused person the money in the escrow account.

D. For purposes of this section, a person found not guilty by reason of insanity at the time of commission of an offense shall be deemed to be a convicted person.

E. Notwithstanding the provisions of Subsections A through C of this section, the commission shall make payments from the escrow account to any person accused or convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that the money shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process.

F. Upon a showing by any accused or convicted person that five years have elapsed from the establishment of the escrow account, that any claims brought pursuant to this section have been disposed of and that no such claims are pending against him, the commission shall immediately pay over to such accused or convicted person any money in the escrow account.

G. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise to defeat the purpose of this section, shall be null and void as against the public policy of the state.

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CHAPTER 31 Criminal Procedure

Pamphlet 53—Sentencing, Probation, Parole

Art.

17. Victim Restitution, 31-17-1.
18. Sentencing of Offenders, 31-18-1 to 31-18-21.
19. Sentencing Authority for Misdemeanors, 31-19-1.
20. Sentencing, 31-20-1 to 31-20-12.
- 20A. Capital Felony Sentencing, 31-20A-1 to 31-20A-6.
21. Sentence, Pardons and Paroles, 31-21-1 to 31-21-26.
22. Crime Victims Reparations, 31-22-1 to 31-22-21.

ARTICLE 17 Victim Restitution

Sec.

31-17-1. Victim restitution.

31-17-1. Victim restitution.

A. It is the policy of this state that restitution be made by each violator of the Criminal Code of New Mexico to the victims of his criminal activities to the extent that the defendant is reasonably able to do so. This section shall be interpreted and administered to effectuate this policy. As used in this section unless the context otherwise requires:

(1) "victim" means any person who has suffered actual damages as a result of the defendant's criminal activities;

(2) "actual damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. Without limitation, actual damages includes damages for wrongful death;

(3) "criminal activities" includes any crime for which there is a plea of guilty or verdict of guilty, upon which a judgment may be rendered and any other crime committed after July 1, 1977 which is admitted or not contested by the defendant; and

(4) "restitution" means full or partial payment of actual damages to a victim.

B. If the trial court exercises either of the sentencing options under Section 31-20-6 NMSA 1978, the court shall require as a condition of probation or parole that the defendant, in cooperation with the probation or parole officer assigned to the defendant, promptly prepare a plan of restitution, including a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is presently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation or parole period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that he will not be able to make any restitution, he shall so state and shall specify the reasons. If the defendant believes that no person suffered actual damages as a result of the defendant's criminal activities, he shall so state.

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C. The defendant's plan of restitution and the recommendations of his probation or parole officer shall be submitted promptly to the court. The court shall promptly enter an order approving, disapproving or modifying the plan taking into account the factors enumerated in Subsection D of this section. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or parole. Restitution payments shall be made to the clerk of the court unless otherwise directed by the court. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion. If the plan as approved or modified does not require full payment of actual damages to all victims, or if the court determines that the defendant is not able and will not be able to make any restitution at any time during his probation or parole period or that no person suffered actual damages as a result of the defendant's criminal activities, the court shall file a specific written statement of its reasons for and the facts supporting its action or determination.

D. The probation or parole officer when assisting the defendant in preparing the plan of restitution, and the court before approving, disapproving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant, his age, his education, his employment circumstances, his potential for employment and vocational training, his family circumstances, his financial condition, the number of victims, the actual damages of each victim, what plan of restitution will most effectively aid the rehabilitation of the defendant and such other factors as shall be appropriate. The probation or parole officer shall attempt to determine the name and address of each victim and the amount of his pecuniary damages.

E. The clerk of the court shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution, including the court's statement, if any, under Subsection C of this section.

F. At any time during the probation or parole period the defendant or the victim may request and the court shall grant a hearing on any matter related to the plan of restitution.

G. Failure of the defendant to comply with Subsection B of this section or to comply with the plan of restitution as approved or modified by the court may constitute a violation of the conditions of probation or parole. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation or parole period specified in Section 31-21-10 NMSA 1978.

H. This section and proceedings under this section shall not limit or impair the rights of victims to recover damages from the defendant in a civil action. However, any restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event. The fact that restitution was required or made shall not be admissible as evidence in a civil action unless offered by such defendant.

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(7) if the district court has ordered that the prisoner make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the parole board may include restitution as a condition of parole.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings or conditions to be imposed on parolees. Whenever an order for parole is issued, it shall recite the conditions thereof.

Chapter 38

38-6-4. Per diem and mileage for witnesses.

A. Witnesses shall be allowed no fees for services, but shall receive per diem expense and mileage at the rate specified for nonsalaried public officers as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] for that time in which attendance is required, with certification of the clerk of the court.

B. The district judge in any civil case pending in the district court may order the payment of a reasonable fee, to be taxed as costs, in addition to the per diem and mileage as provided for in Subsection A of this section, for any witness who qualifies as an expert and who testifies in the cause in person or by deposition. The additional compensation shall include a reasonable fee to compensate the witness for the time required in preparation or investigation prior to the giving of the witness's testimony. The expert witness fee which may be allowed by the court shall be limited to one expert regarding liability and one expert regarding damages unless the court finds that additional expert testimony was reasonably necessary to the prevailing party and the expert testimony was not cumulative.

C. The provisions of this section shall apply only to cases filed on or after its effective date.

Chapter 10

10-8-4. Per diem and mileage rates; in lieu payment.

A. Notwithstanding any other specific law to the contrary and except as provided in Subsection I of this section, every nonsalaried public officer shall receive forty-four dollars (\$44.00) per diem expenses:

(1) for each board or committee meeting attended; or

(2) for each day spent in discharge of official duties for travel within the state but away from his home.

Nonsalaried public officers who travel to attend a board or committee meeting may elect to be reimbursed per diem under either Paragraph (1) or (2) of this subsection.

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31-20-6. Conditions of order deferring or suspending sentence.

The district court shall attach to its order deferring or suspending sentence such reasonable conditions as it may deem necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality. The defendant upon conviction shall be required to pay the actual costs of his probation service to the field services division of the corrections department for deposit to the general fund, not exceeding one thousand twenty dollars (\$1,020) annually to be paid in monthly installments of not less than fifteen dollars (\$15.00) and not more than eighty-five dollars (\$85.00), subject to modification, upon court approval, by the appropriate district supervisor of the field services division on the basis of changed financial circumstances, and may be required:

A. to make restitution pursuant to the provisions of Section 31-17-1 NMSA 1978 to victims for actual damages or loss caused by the crime for which conviction was had;

* * *

31-21-10. Parole authority and procedure.

A. The board may release on parole any person confined in any correctional institution administered by state authorities, except persons under sentence of death, when the prisoner gives evidence of having secured gainful employment or satisfactory evidence of self-support, and the board finds in its opinion the prisoner can be released without detriment to himself or to the community.

D. Before ordering the parole of any prisoner, the board shall have the inmate appear before it and shall interview him at the institution to which he is committed. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered a reduction of sentence or a pardon. An inmate shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board. The board shall furnish to each person released under their supervision a written statement of the conditions of parole which shall be accepted and agreed to by him as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board and shall instruct him regarding the same. Provided that the following rules shall apply to the eligibility of prisoners for paroles:

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30-24-3. Bribery of witness.

Bribery of witness consists of any person:

C. intimidating or threatening any witness, or person likely to become a witness, in any judicial, administrative, legislative or other official cause or proceeding pending or about to be brought, for the purpose of preventing such individual from testifying to any fact, to abstain from testifying or to testify falsely.

Whoever commits bribery of witness is guilty of a fourth degree felony.

* * *

31-21-25. Powers and duties of the board.

E. The board shall provide a copy of its regular docket to each district attorney in the state at least twenty days before the docket is considered by the board or, in the case of a supplemental, addendum or special docket, at least ten days before that docket is considered by the board, and shall notify the district attorney of any recommendations for commutations or paroles. The district attorney shall notify any person known to reside in his district who was a victim of the crime for which any person on the docket was committed. Promptly following any board meeting, the board shall notify each district attorney of the names of persons approved for release. The corrections department shall assist the board in the exercise of its duties with respect to this subsection and, in the case of any inmate to be released from a correctional facility without parole, shall notify each district attorney in the state at least twenty days before his release, and the district attorney shall notify any person known to reside in his district who was a victim of the crime for which the inmate was committed.

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33-2-48. Corrections; escape.

The corrections department shall immediately notify the district attorney of the judicial district from which the inmate was committed when an inmate escapes from a correctional facility under the jurisdiction and control of that department and when an inmate convicted in New Mexico of a capital, first degree or second degree felony and transferred to an institution under the control of another state escapes from that institution. The district attorney shall notify any person known to reside in his district who was a victim of the crime for which the inmate was committed.

* * *

29-1-14. Unclaimed property; authority to sell; notice of sale; deadly weapons, controlled substances and other contraband excepted.

A. Any personal property that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of the state, county, municipality or peace officer for more than ninety days shall be sold at public sale. Firearms shall be sold only to licensed dealers or licensed collectors as defined in the Gun Control Act of 1968.

B. The peace officer shall publish a notice of the sale of unclaimed personal property once each week for two successive weeks. The notice shall contain:

- (1) a brief description of the personal property to be sold;
- (2) the time and place of the sale; and
- (3) the name of any purported owner or owners, if known.

C. If, prior to the sale, the true owner identifies the personal property to be sold and offers strict proof of identity and ownership of the personal property, the personal property shall be returned to its true owner.

D. Any personal property sold at public sale or claimed by its true owner shall be removed from the inventory record kept by the peace officer.

E. This section shall not apply to deadly weapons, except for firearms or items of significant historical value, poisons, controlled substances or other contraband lawfully seized as evidence for the prosecution of a violation of statute or ordinance or which has otherwise come into the lawful possession of the state, county, municipality or peace officer and has been in possession for more than one year. Once it is determined by the peace officer that any property enumerated in this subsection is no longer necessary for use in obtaining a conviction or is not needed for any other public purpose, he may apply to the district court, ex parte and without notice, for an order authorizing destruction or other disposition of the property. The court shall grant the application if the proposed destruction or disposition is in the best interest of the public safety and welfare.

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ARTICLE 11
Sexual Crimes Prosecution and Treatment Act

29-11-2. Purpose.

The purpose of the Sexual Crimes Prosecution and Treatment Act [29-11-1 to 29-11-6 NMSA 1978] is to promote effective law enforcement and prosecution of sexual crimes and to provide medical and psychological assistance for victims of such crimes. Implementation of the Sexual Crimes Prosecution and Treatment Act will serve to assist existing community-based victim treatment programs, to provide interagency cooperation, training of law enforcement, criminal justice and medical personnel and to effect proper handling and testing of evidence in sexual crime offenses.

History: 1978 Comp., § 29-11-2, enacted by Laws 1978, ch. 27, § 2.

29-11-3. Definitions.

As used in the Sexual Crimes Prosecution and Treatment Act [29-11-1 to 29-11-6 NMSA 1978]:

A. "administrator" means the director of the behavioral health services division of the health and environment department, or such person or office as the administrator may designate to act in his stead;

B. "evidence" means that evidence relating to the commission of a sexual crime;

C. "medical and psychological treatment" includes that medical, mental or emotional treatment provided a victim of a sexual crime. In addition to the improved physical and emotional condition of a victim, such treatment should result in the improved ability of a victim to make informed and rational choices about serving as a witness in the prosecution of a suspect of a sexual crime; and

D. "sexual crime" includes any act which may be alleged to be a sexual offense or an attempted sexual offense under the provisions of Sections 30-9-10 through 30-9-16 and 30-10-3 NMSA 1978.

History: 1978 Comp., § 29-11-3, enacted by Laws 1978, ch. 27, § 3.

29-11-4. Fund created; administration.

A. There is created in the state treasury the "sexual crimes prosecution and treatment fund." Money appropriated to the fund shall be used to carry out the purposes of the Sexual Crimes Prosecution and Treatment Act [29-11-1 to 29-11-6 NMSA 1978].

B. The fund shall be administered by the administrator.

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29-11-5. Sexual crimes prosecution and treatment program.

A. The administrator shall develop, with the cooperation of the criminal justice department, the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes; to develop strategies for prevention of such crimes; to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes; and to provide medical and psychological treatment to victims of such crimes. This plan shall include, but not be limited to:

- (1) education and training of law enforcement officers and criminal justice and medical personnel;
- (2) collection, processing and analysis of evidence which facilitates prosecution of suspects of sexual crimes; and
- (3) medical and psychological treatment of victims of such crimes.

B. The comprehensive plan shall be implemented throughout the state, and the administrator may contract with appropriate persons, entities, agencies or community-based programs to provide the services to be rendered pursuant to Subsection A of this section and may pay a reasonable fee for such services.

C. Nothing in this section shall be construed to require criminal prosecution of a suspect of a sexual crime by the victim to whom services are rendered pursuant to the provisions of the Sexual Crimes Prosecution and Treatment Act [29-11-1 to 29-11-6 NMSA 1978].

D. Training for law enforcement officers in the proper treatment of victims of sexual crimes and collection of evidence and coordination among agencies shall be incorporated in the regular training program for recruits by the New Mexico state police; the basic course taught by the New Mexico law enforcement academy or by other authorized law enforcement agencies. Already-commissioned officers and sex-crime investigators shall receive advanced training through in-service programs.

History: 1978 Comp., § 29-11-5, enacted by Laws 1978, ch. 27, § 5; 1979, ch. 202, § 50.

The 1979 amendment inserted "the New Mexico state police, the New Mexico law enforcement academy" following "criminal justice department" near the beginning of Subsection A and, in the first sentence in Subsection D, deleted "division" following "state police" and substituted "New Mexico law

enforcement academy" for "training and education bureau of the criminal justice department."

Effective date. — Laws 1979, ch. 202, § 54, makes the act effective on July 1, 1979.

Repealing clause. — Laws 1979, ch. 202, § 53, repeals 29-2-17, 29-2-23, 29-2-26 and 29-3-5 to 29-3-7 NMSA 1978.

29-11-6. Report.

By December 15 of each year, a report shall be filed with the governor and the legislative council by the administrator concerning all aspects of the sexual crimes prosecution and treatment program and specifically the administrator's conclusions and recommendations regarding the effectiveness of the sexual crimes prosecution and treatment program implemented throughout the state.

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30-9-17. Videotaped depositions of alleged victims who are under sixteen years of age; procedure; use in lieu of direct testimony.

A. In any prosecution for criminal sexual penetration or criminal sexual contact of a minor, upon motion of the district attorney and after notice to the opposing counsel, the district court may, for a good cause shown, order the taking of a videotaped deposition of any alleged victim under the age of sixteen years. The videotaped deposition shall be taken before the judge in chambers in the presence of the district attorney, the defendant and his attorneys. Examination and cross-examination of the alleged victim shall proceed at the taking of the videotaped deposition in the same manner as permitted at trial under the provisions of Rule 611 of the New Mexico Rules of Evidence. Any videotaped deposition taken under the provisions of this act [this section] shall be viewed and heard at the trial and entered into the record in lieu of the direct testimony of the alleged victim.

B. For the purposes of this section, "videotaped deposition" means the visual recording on a magnetic tape, together with the associated sound, of a witness testifying under oath in the course of a judicial proceeding, upon oral examination and where an opportunity is given for cross-examination in the presence of the defendant and intended to be played back upon the trial of the action in court.

C. The supreme court may adopt rules of procedure and evidence to govern and implement the provisions of this act.

D. The cost of such videotaping shall be paid by the state.

E. Videotapes which are a part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

Category	Citation
1. Victim Compensation Program	Exec. Law §§620 et seq.
1.1 Responsible Agency	Exec. Law §622
1.2 Eligible Claimants	Exec. Law §624
1.3 Losses Covered	Exec. Law §631(2)
1.4 Minimum and Maximum Award	Exec. Law §631(3)
1.5 Required to Show Financial Need	Exec. Law §631(6)
1.6 Required to Report Crime - Time Limit	Exec. Law §631(1)
1.7 Filing of Claim - Time Limit	Exec. Law §625(2)
1.8 Emergency Award	Exec. Law §630
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	Penal Law §65.10(g)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	Penal Law §60.27 (mandatory consideration)
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	Exec. Law §632-a
4. Witness Fees	Crim. Proc. Law §610.50, CPLR §8001
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	Penal Law §§215.10 et seq.
6.2 Protective Orders	Crim. Proc. Law §530.13
7. Victim Notification	
7.1 of Compensation Program	Exec. Law §625-a
7.2 of Witness Fees	
7.3 of Final Disposition	Crim. Proc. Law §440.50
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	See, Crim. Proc. Law §330.20(19) (notice to person endangered by mentally ill escapee)
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	Crim. Proc. Law §390.30(3)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	Penal Law §215.11
10. Return of Seized Property	Penal Law §450.10
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	See, Exec. Law §623(11),(12),(21) (duties of crime victims board)
12. Elderly Victims	See, Soc. Serv. Law §§300, 303 (emergency assistance for aged, blind and disabled persons)
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	Soc. Serv. Law §§473 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	Exec. Law §631(7)
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	Crim. Proc. Law §§530.11, 530.12
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	Exec. Law §623(4)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	Exec. Law §633 (records of crime victims board)
15.4 Sexual Assault Counselor Privilege	

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ARTICLE 22¹—CRIME VICTIMS BOARD

- Sec.
- 620. Declaration of policy and legislative intent.
 - 621. Definitions.
 - 622. Crime victims compensation board.
 - 623. Powers and duties of the board.
 - 624. Eligibility.
 - 625. Filing of claims.
 - 625-a. Information relative to claims; application forms.
 - 626. Out-of-pocket loss; definition.
 - 627. Determination of claims.
 - 628. Consideration of decisions by board.
 - 629. Judicial review.
 - 630. Emergency awards.
 - 631. Awards.
 - 632. Manner of payment.
 - 632-a. Distribution of moneys received as a result of the commission of crime.
 - 633. Confidentiality of records.
 - 634. Subrogation.
 - 635. Severability of provisions.

§ 620.¹ Declaration of policy and legislative intent

The legislature recognizes that many innocent persons suffer personal physical injury or death as a result of criminal acts. Such persons or their dependents may thereby suffer disability, incur financial hardships, or become dependent upon public assistance. The legislature finds and determines that there is a need for government financial assistance for such 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 such victims of crime.

§ 621.¹ Definitions

For the purposes of this article:

1. "Board" shall mean the crime victims board.
2. "Claimant" shall mean the person filing a claim pursuant to this article.
3. "Crime" shall mean an act committed in New York 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 the penal law, provided, however, that no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purposes of this article unless the injuries were intentionally inflicted through the use of a vehicle.

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4. "Family", when used with reference to a person, shall mean (a) any person related to such person within the third degree of consanguinity or affinity, (b) any person maintaining a sexual relationship with such person, or (c) any person residing in the same household with such person.

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

6. "Representative" shall mean one who represents or stands in the place of another person, including but not limited to an agent, an assignee, an attorney, a guardian, a committee, a conservator, a partner, a receiver, an administrator, an executor or an heir of another person, or a parent of a minor.

7. "Good samaritan" shall mean a person who, other than a law enforcement officer, acts in good faith (a) to apprehend a person who has committed a crime in his presence or who has in fact committed a felony, (b) to prevent a crime or an attempted crime from occurring, or (c) to aid a law enforcement officer in effecting an arrest.

8. "Essential personal property" shall mean articles of personal property necessary and essential to the health, welfare or safety of the victim.

9. "Elderly victim" shall mean a person sixty years of age or older who suffers loss, or damage as a direct result of a crime.

As amended L.1982, c. 351, § 1; L.1983, c. 197, § 1.

§ 622.¹ Crime victims compensation board

1. There is hereby created in the executive department a board, to be known as the crime victims board. Such board shall consist of five members, no more than three of whom shall belong to the same political party, who shall be appointed by the governor by and with the advice and consent of the senate. Three of the members appointed by the governor shall have been admitted to practice law in the state of New York for not less than five years next preceding their appointment.

2. The term of office of each such member shall be seven years. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

3. The governor shall designate one member of the board as chairman thereof, to serve as such at the pleasure of the governor.

4. The members of the board shall devote their whole time and capacity to their duties, and shall not engage in any other occupation, profession or employment, and shall receive an annual salary to be fixed by the governor within the amount made available therefor by appropriation.

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§ 623.¹ Powers and duties of the board

The board shall have the following powers and duties:

1. To establish and maintain a principal office and such other offices within the state as it may deem necessary.
2. To appoint a secretary, counsel, clerks and such other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.
3. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this article, including rules for the approval of attorneys' fees for representation before the board or before the appellate division upon judicial review as provided for in section six hundred twenty-nine of this article, and rules for the authorization of qualified persons to assist claimants in the preparation of claims for presentation to the board or board members.
4. To request from the division of state police, from county or municipal police departments and agencies and from any other state or municipal department or agency, or public authority, and the same are hereby authorized to provide, such assistance and data as will enable the board to carry out its functions and duties.
5. To hear and determine all claims for awards filed with the board pursuant to this article, and to reinvestigate or reopen cases as the board deems necessary.
6. To direct medical examination of victims.
7. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subdivision may be delegated by the board to any member or employee thereof. A subpoena issued under this subdivision shall be regulated by the civil practice law and rules.
8. To take or cause to be taken affidavits or depositions within or without the state.
9. To establish and maintain a special investigative unit to expedite processing of claims by senior citizens and special emergency situations, and to promote the establishment of a volunteer program of home visitation to elderly and invalid victims of violent crime.

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10. To advise and assist the governor in developing policies designed to recognize the legitimate rights, needs and interests of crime victims.

11. To coordinate state programs and activities relating to crime victims.

12. To cooperate with and assist political subdivisions of the state in the development of local programs for crime victims.

13. To study the operation of laws and procedures affecting crime victims and recommend to the governor proposals to improve the administration and effectiveness of such laws.

14. To establish an advisory council to assist in formulation of policies on the problems of crime victims.

15. To advocate the rights and interests of crime victims of the state before federal, state and local administrative, regulatory, legislative, judicial and criminal justice agencies.

16. To promote and conduct studies, research, analyses and investigations of matters affecting the interests of crime victims.

17. To sponsor conferences relating to the problems of crime victims.

18. To serve as a clearinghouse for information relating to crime victims problems and programs.

19. To accept, with the approval of the governor, as agent of the state, any grant including federal grants, or any gift for the purposes of this article. Any monies so received may be expended by the board to effectuate any purpose of this article, subject to the applicable provisions of the state finance law.

20. To render each year to the governor and to the legislature a written report on the board's activities and the manner in which the rights, needs and interests of crime victims are being addressed by the state's criminal justice system.

21. To contract for counseling services and to make such services available without charge to eligible persons as defined in section six hundred twenty-four of this article who are suffering traumatic shock as the result of a crime.

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§ 624. Eligibility

1. Except as provided in subdivision two of this section, the following persons shall be eligible for awards pursuant to this article:

- (a) a victim of a crime;
- (b) a surviving spouse, parent or child of a victim of a crime who died as a direct result of such crime;
- (c) any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime;
- (d) any person who has paid for the burial expenses of a victim who died as a direct result of such crime, except such person shall not be eligible to receive an award for other than burial expenses unless otherwise eligible under paragraph (a), (b), or (c) of this subdivision; and
- (e) an elderly victim of a crime.

2. A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person shall not be eligible to receive an award with respect to such claim. A member of the family of a person criminally responsible for the crime upon which a claim is based or a member of the family of an accomplice of such person, shall not be eligible to receive an award, unless the board finds that the person criminally responsible or the accomplice, as the case may be, shall not benefit from the award; that the victim is deceased or suffered physical injury; and that one or more of the following circumstances exist:

- (a) the person or accomplice criminally responsible has been charged with or convicted of such crime; or
 - (b) such person has been admitted or committed to a state or private hospital for treatment of mental illness, pursuant to the provisions of article nine of the mental hygiene law; or
 - (c) such person is deceased, deported, a fugitive or not yet apprehended; or
 - (d) the victim did not reside in the same household with the person criminally responsible for the crime for a period of at least one year prior to the crime; or
 - (e) the victim no longer resides with such person and if such persons were married, there exists a valid divorce or separation decree or agreement; or
 - (f) the victim is an emancipated minor or a minor in the care or custody of a person or institution other than the person criminally responsible for the crime.
- As amended L.1982, c. 205, § 1; L.1983, c. 197, § 2; L.1983, c. 805, § 2; L.1983, c. 811, § 1.

§ 625.¹ Filing of claims

1. A claim may be filed by a person eligible to receive an award, as provided in section six hundred twenty-four of this article, or, if such person is under the age of eighteen years, an incompetent, or a conservatee, by his relative, guardian, committee, conservator, or attorney.

2. A claim must be filed by the claimant not later than one year after the occurrence of the crime upon which such claim is based, or not later than one year after the death of the victim, provided, however, that upon good cause shown, the board may extend the time for filing for a period not exceeding two years after such occurrence.

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3. Claims shall be filed in the office of the secretary of the board in person or by mail. The secretary of the board shall accept for filing all claims submitted by persons eligible under subdivision one of this section and alleging the jurisdictional requirements set forth in this article and meeting the requirements as to form in the rules and regulations of the board.

4. Upon filing of a claim pursuant to this article, the board shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within ten days after such notification, such district attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this article until such time as such criminal prosecution has been concluded and shall so notify such district attorney and the claimant. When such criminal prosecution has been concluded, such district attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to section six hundred thirty of this article.

§ 625-a. Information relative to claims; application forms

1. Every police station, precinct house, any appropriate location where a crime may be reported and any location required by the rules and regulations of the board shall have available informative booklets, pamphlets and other pertinent written information, to be supplied by the board, relating to the availability of crime victims compensation including all necessary application blanks required to be filed with the board and shall display prominently posters giving notification of the existence and general provisions of this article, those provisions of the penal law that prohibit the intimidation of crime victims and the location of the nearest crime victim service program. The board may issue guidelines for the location of such display and shall provide posters, application forms and general information. Every victim who reports a crime in any manner whatsoever shall be supplied by the person receiving the report with information and application blanks.

1-a. Every general hospital established under the laws of this state, which maintains facilities for providing out-patient emergency medical care, shall display prominently in its emergency room posters giving notification of the existence and general provisions of this chapter. The board may issue guidelines for the location of such display and shall provide posters, application forms and general information regarding the provisions of this chapter to each such hospital.

2. No cause of action of whatever nature or kind arising out of a failure to give or receive the notice required by this section shall accrue to any person against the state or any of its agencies or local subdivisions, or, any police officer or other agent,

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servant or employee thereof, or any hospital or agents or employees thereof, nor shall any such failure be deemed or construed to affect or alter any time limitation or other requirement contained in this article for the filing or payment of a claim hereunder.

§ 626. Out-of-pocket loss; definition

Out-of-pocket loss shall mean unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care or other services necessary as a result of the injury upon which such claim is based. Such expenses or indebtedness shall include the cost of counseling, under regulations of the board, for the eligible spouse, parents or children of a homicide victim.

§ 627. Determination of claims

1. A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims arising from the death of an individual as a direct result of a crime, shall be considered together by a single board member.

2. The board member to whom such claim is assigned shall examine the papers filed in support of such claim. The board member shall thereupon cause an investigation to be conducted into the validity of such claim. Such investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which such claim is based.

3. Claims shall be investigated and determined, 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.

4. The board member to whom a claim is assigned may decide such claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of such claim. If the board member is unable to decide such claim upon the basis of such papers and such report, he shall order a hearing. At such hearing any relevant evidence, not legally privileged, shall be admissible.

5. After examining the papers filed in support of such claim and the report of investigation, and after a hearing, if any, the board member to whom such claim was assigned shall make a decision either granting an award pursuant to section six hundred thirty-one of this article or deny the claim.

6. The board member making a decision shall file with the secretary a written report setting forth such decision and his reasons therefor. The secretary shall thereupon notify the claimant and furnish him a copy of such report.

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§ 628. Consideration of decisions by board

1. The claimant may, within thirty days after receipt of the report of the decision of the board member to whom his claim was assigned, make an application in writing to the chairman of the board for consideration of such decision by the board.

2. Any member of the board may, within thirty days after the filing of such report, make an application in writing to the chairman of the board for consideration of such decision by the board.

3. Upon receipt of an application pursuant to subdivision one or two of this section, the chairman of the board shall designate three members of the board not including the board member who made the decision to review the record and affirm or modify the decision of the board member to whom the claim was assigned. For the purpose of such review the three members of the board so designated shall constitute the board. The action of the board in affirming or modifying such decision shall be the final decision of the board. The board shall file with the secretary of the board a written report setting forth its decision, and if such decision varies in any respect from the report of the board member to whom the claim was assigned setting forth its reasons for such decision. If the chairman of the board receives no application pursuant to subdivision one or two of this section, the decision of the board member to whom the claim was assigned shall become the final decision of the board.

4. The secretary of the board shall promptly notify the claimant, the attorney general and the comptroller of the final decision of the board and furnish each with a copy of the report setting forth such decision.

§ 629. Judicial review

1. Within thirty days after receipt of the copy of the report containing the final decision of the board, the attorney general may, if in his judgment the award is illegal or excessive, commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board. Within thirty days after receipt of the copy of such report, the comptroller may, if in his judgment the award is illegal or excessive, request the attorney general to commence a proceeding in the appellate division of the supreme court, third department, to review the decision of the board in which event the attorney general shall commence such a proceeding. Such proceeding shall be heard in a summary manner and shall have precedence

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over all other civil cases in such court. Any claimant aggrieved by a final decision of the board may commence a proceeding to review that decision pursuant to article seventy-eight of the civil practice law and rules.

2. Any such proceeding shall be commenced by the service of notice thereof upon the claimant and the board in person or by mail.

§ 630. Emergency awards

Notwithstanding the provisions of section six hundred twenty-seven of this article, if it appears to the board member to whom a claim is assigned, that such claim is one with respect to which an award probably will be made, and undue hardship will result to the claimant if immediate payment is not made, such board member may make one or more emergency awards to the claimant pending a final decision of the board or payment of an award in the case, provided, however, that (a) the amount of each such emergency award shall not exceed five hundred dollars, (b) the total amount of such emergency awards shall not exceed fifteen hundred dollars, (c) the amount of such emergency awards shall be deducted from any final award made to the claimant, and (d) the excess of the amount of any such emergency award over the amount of the final award, or the full amount of any emergency awards if no final award is made, shall be repaid by the claimant to the board.

§ 631. Awards

1. No award shall be made unless the board or board member, as the case may be, finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to, or death of, the victim, and (c) police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than one week after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

2. Any award made pursuant to this article shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based; loss of earnings or support resulting from such injury; and the unreimbursed cost of repair or replacement of articles of essential personal property, lost, damaged or destroyed as a direct result of the crime. In addition to the medical or other services necessary as a result of the injury upon which the claim is based, an award may be made for rehabilitative occupational training for the

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purpose of job retraining or similar employment-oriented rehabilitative services for a sum not to exceed three thousand dollars provided such rehabilitative services are deemed necessary by the board based upon the claimant's medical and employment history. For the purpose of this subdivision, rehabilitative occupational training shall include but not be limited to educational training and expenses.

3. Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this article, be in an amount equal to the actual loss sustained, provided, however, that no such award shall exceed two hundred fifty dollars for each week of lost earnings or support, and provided further that the aggregate award for such loss shall not exceed twenty thousand dollars or an amount determined by the board in excess of twenty thousand dollars, provided that such amount in excess of twenty thousand dollars is fully reimbursable to the board by available federal funds. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned by the board among the claimants.

4. Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury (a) from or on behalf of the person who committed the crime, (b) under insurance programs mandated by law, (c) from public funds, (d) under any contract of insurance wherein the claimant is the insured or beneficiary, (e) as an emergency award pursuant to section six hundred thirty of this article.

5. (a) In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or reject the claim altogether, in accordance with such determination.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, the board or board member, as the case may be, shall disregard for this purpose the responsibility of the victim for his own injury where the record shows that the person injured was acting as a good samaritan, as defined in this article.

(c) Notwithstanding any inconsistent provision of this article, where the person injured acted as a good samaritan, the board or board member, as the case may be, may, without regard to the serious financial hardship of the claimant, make an award for out-of-pocket losses. Such award may also include compensation for any loss of property up to five thousand dollars suffered by the victim during the course of his actions as a good samaritan.

(d) Notwithstanding any inconsistent provision of this article, where a person acted as a good samaritan, and was killed as a direct result of the crime, the board or the board member, as the case may be, may, without regard to the serious financial hardship of the claimant, make a lump sum award to such claimant for actual loss of support not to exceed twenty thousand dollars.

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6. (a) Claims may be approved only if the board or board member, as the case may be, finds that unless the claimant's award is approved he will suffer financial difficulty. In determining financial difficulty, the board or board member shall consider all relevant factors, including but not limited to:

- (1) the number of claimant's dependents;
- (2) reasonable living expenses of the claimant and his family;
- (3) any special health, rehabilitative or educational needs of the claimant and his dependents;
- (4) the claimant's employment situation including income and potential earning capacity;
- (5) the claimant's net financial resources after authorized deduction as provided in paragraphs (b) and (c) of this subdivision;
- (6) whether claimant's financial resources will become exhausted during his lifetime; and

(7) the nature and the amount of claimant's total debt and liabilities, including the amount of debt incurred or to be incurred to pay for losses and expenses of the crime, and the extent to which claimant's essential assets will have to be liquidated.

(b) 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 the value, within reasonable limits, of the following items:

- (1) a homestead, not exceeding one hundred thousand dollars, or a total of five years' rent for a renter;
- (2) personal property consisting of clothing and strictly personal effects;
- (3) household furniture, appliances and equipment;
- (4) tools and equipment necessary for the claimant's trade, occupation or business;
- (5) a family automobile;
- (6) life insurance, except in death claims; and
- (7) retirement, education and health plans.

(c) The board or board member, after taking into consideration the claimant's financial resources, may exempt that portion of the victim's or claimant's annual income required to meet reasonable living expenses and the value of inventory or other property necessary for the claimant's business or occupation or the production of income required to meet reasonable living expenses. In no event shall the aggregate value of exemptions under this paragraph exceed one hundred thousand dollars.

(d) Nothing contained in this subdivision shall be construed to mean that the board must maintain the same standard of living enjoyed by the claimant prior to the death or injury.

(e) The board shall establish such rules and regulations as are necessary for the implementation of this section.

7. Notwithstanding the provisions of subdivision six of this section, an award shall include out-of-pocket expenses, including indebtedness reasonably incurred by the victim of a sex offense or the person responsible for the victim of such sex offense, as such sex offense is defined in article one hundred thirty of the penal law, for a hospital or medical examination in connection with the investigation or prosecution of any such offense.

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8. Notwithstanding the provisions of subdivisions one, two and three of this section, an elderly victim who has not been physically injured as a direct result of a crime, shall only be eligible for an award that includes the unreimbursed cost of repair or replacement of essential personal property that has been lost, damaged or destroyed as a direct result of a crime and transportation expenses incurred for necessary court appearances in connection with the prosecution of such crimes.

9. Any award made for the cost of repair or replacement of essential personal property shall be limited to an amount of two hundred fifty dollars.

10. Notwithstanding any contrary provision of law, an award shall include reasonable transportation expenses incurred for necessary court appearances in connection with the prosecution of such crimes upon which the claim is based.

§ 632. Manner of payment

1. The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to this article shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

2. Where a person entitled to receive an award is a person under the age of eighteen years, an incompetent, or a conservatee, the award may be paid to a relative, guardian, committee, conservator, or attorney of such person on behalf of and for the benefit of such person. In such case the payee shall be required to file a periodic accounting of the award with the board and to take such other action as the board shall determine is necessary and appropriate for the benefit of the person under the age of eighteen years, incompetent or conservatee.

§ 632-a. Distribution of moneys received as a result of the commission of crime

1. Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinions or emotions regarding such crime, shall submit a copy of such contract to the board and pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives. The board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim

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of crimes committed by: (i) such convicted person; or (ii) by such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives.

2. The board, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section. For crimes committed in a county located within a city having a population of one million or more, the notice provided for in this section shall be in newspapers having general circulation in such city. The board may, in its discretion, provide for such additional notice as it deems necessary.

3. Upon dismissal of charges or acquittal of any accused person the board shall immediately pay over to such accused person the moneys in the escrow account established on behalf of such accused person.

4. Upon a showing by any convicted person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to this section, the board shall immediately pay over any moneys in the escrow account to such person or his legal representatives.

5. For purposes of this section, a person found not guilty as a result of the defense of mental disease or defect pursuant to section 30.05 of the penal law shall be deemed to be a convicted person.

6. Whenever it is found, pursuant to article seven hundred thirty of the criminal procedure law,¹ that a person accused of a crime is unfit to proceed as a result of mental disease or defect because such person lacks capacity to understand the proceedings against him or to assist in his own defense, the board shall bring an action of interpleader pursuant to section one thousand six of the civil practice law and rules to determine disposition of the escrow account.

7. Notwithstanding any inconsistent provision of the estates, powers and trusts law or the civil practice law and rules with respect to the timely bringing of an action, the five year period provided for in subdivision one of this section shall not begin to run until an escrow account has been established.

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8. Notwithstanding the foregoing provisions of this section the board shall make payments from an escrow account to any person accused or convicted of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such person, including the appeals process. The board may in its discretion and after notice to the victims of the crime make payments from the escrow account to a representative of any person accused or convicted of a crime for the necessary expenses of the production of the moneys paid into the escrow account, provided the board finds that such payments would be in the best interests of the victims of the crime and would not be contrary to public policy. The total of all payments made from the escrow account under this subdivision shall not exceed one-fifth of the total moneys paid into the escrow account and available to satisfy civil judgments obtained by the victims of the crime.

9. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

10. For purposes of this section:

(a) Victim shall mean a person who suffers personal, physical, mental, or emotional injury, or pecuniary loss as a direct result of the crime.

(b) A person convicted of a crime shall include any person convicted of a crime in this state either by entry of a plea of guilty or by conviction after trial and any person who has voluntarily and intelligently admitted the commission of a crime for which such person is not prosecuted.

11. Notwithstanding any other provision of law, claims on moneys in the escrow account shall have the following priorities:

(a) Payments ordered by the board or a court pursuant to subdivision eight of this section;

(b) Subrogation claims of the state pursuant to section six hundred thirty-four of this article in an amount not exceeding one-half of the net amount of the civil judgment obtained by a victim which is payable directly to the victim from the escrow account;

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- (c) Civil judgments of the victims of the crime;
- (d) Other judgment creditors or persons claiming moneys through the person accused or convicted of a crime who present lawful claims, including state or local government tax authorities;
- (e) The person accused or convicted of the crime.

No payment shall be made out of the escrow account where such payment would be in derogation of claims, either presented or pending, entitled to a higher priority under this subdivision. The board may bring an action of interpleader pursuant to section one thousand six of the civil practice law and rules or an action for a declaratory judgment where it cannot determine the priority of claims and the proper disposition of the escrow account.

Moneys in the escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this subdivision.

12. Notwithstanding any other provisions of law, the board shall have exclusive jurisdiction and control, as escrow agent, over any moneys subject to this section. No distribution of moneys in such escrow accounts shall be made except by determination and order of the board, pursuant to the provisions of this section and the board's rules and regulations. Any party aggrieved by a final determination and order of the board under this section may seek judicial review of such decision pursuant to article seventy-eight of the civil practice law and rules.

§ 633. Confidentiality of records

The record of a proceeding before the board or a board member shall be a public record; provided, however, 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 such law or regulation.

§ 634. Subrogation

1. Acceptance of an award made pursuant to this article shall subrogate the state, to the extent of such 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 with respect to which the award is made.

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2. Acceptance of an award made pursuant to this article shall create a lien in favor of the state on the proceeds of any recovery from the person or persons liable for the injury or death giving rise to the award by the board, whether by judgment, settlement or otherwise, after the deduction of the reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery, to the total amount of the award made by the board. Such lien shall attach to any moneys received or to be received by the claimant or victim on account of losses resulting from the crime. Should the claimant or victim secure a recovery from the person or persons liable for the injury or death giving rise to the award by the board, whether by judgment, settlement or otherwise, such claimant may, upon notice to the board, apply to the court in which the action was instituted, or to any court of competent jurisdiction if no action was instituted, for an order apportioning the reasonable and necessary expenditures, including attorney's fees, incurred in effecting such recovery. Such expenditures shall be equitably apportioned by the court between the claimant and the board. A copy of such lien shall be mailed to the clerk of the county within which the crime occurred and such clerk will file the copy in accordance with the duties of such clerk as set forth in section five hundred twenty-five of the county law. The amount of such lien may be compromised or settled by the board provided the board finds that such action is in the best interests of the state, or payment of the full amount of the lien to the state would cause undue hardship for the victim.

3. Any claimant who has received an award under this article, or his guardian, judicially appointed personal representative, or his estate, who brings an action for damages against the person or persons liable for the injury or death giving rise to an award by the board under this article shall give written notice to the board of the commencement of such action at the time such action is commenced. Such notice shall be served personally or by certified mail, return receipt requested.

4. The attorney general may intervene, as of right, in any such action on behalf of the state of New York for the purpose of recovering the subrogated interest due the state of New York under the provisions of this article.

5. The board shall adopt rules and regulations to carry out the provisions and purposes of this section.

§ 635. Severability of provisions

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of this article and the application of such provision to other persons or circumstances shall not be affected thereby.

New York Penal Law

§ 65.10 Conditions of probation and of conditional discharge

[See main volume for text of 1]

2. Conditions relating to conduct and rehabilitation. When imposing a sentence of probation or of conditional discharge, the court may, as a condition of the sentence, require that the defendant:

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(g) Make restitution of the fruits of his offense or make reparation, in an amount he can afford to pay, for the loss or damage caused thereby. When restitution or reparation is a condition of the sentence, the court shall fix the amount thereof, the manner of performance, specifically state the date when restitution is to be paid in full prior to the expiration of the sentence of probation and may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after the restitution or reparation part of a sentence of probation or conditional discharge has been satisfied;

* * *

§ 60.27 Restitution and reparation

1. In addition to any of the dispositions authorized by this article, the court shall consider restitution to the victim of the crime and may require restitution as part of the sentence imposed upon a person convicted of an offense, and after providing the district attorney with an opportunity to be heard in accordance with the provisions of this subdivision, require the defendant to make restitution of the fruits of his offense or reparation for the loss or damage caused thereby. The district attorney¹ shall, upon notification by a victim that such victim seeks restitution, advise the court at the time of sentencing that the victim seeks restitution², the extent of injury or economic loss or damage of the victim, and the amount of restitution sought by the victim. The court shall hear and consider the information presented by the district attorney in this regard.

2. Whenever the court requires restitution or reparation to be made, the court must make a finding as to the fruits of the offense or the loss or damage caused by the offense. If the record does not contain sufficient evidence to support such finding or upon request by the defendant, the court must conduct a hearing upon the issue in accordance with the procedure set forth in section 400.30 of the criminal procedure law.

3. The provisions of sections 420.10, 420.20 and 420.30 of the criminal procedure law shall apply in the collection and remission of restitution and reparation.

4. For purposes of the imposition, determination and collection of restitution or reparation, as provided in this chapter, the term "offense" shall include the offense for which a defendant was convicted, as well as any other offense that is part of the same criminal transaction or that is contained in any other accusatory instrument disposed of by any plea of guilty by the defendant to an offense.

5. (a) Except upon consent of the defendant or as provided in paragraph (b) of this subdivision, or as a condition of probation or conditional discharge as provided in paragraph (g) of subdivision two of section 65.10 of this chapter, the amount of restitution or reparation required by the court shall not exceed five thousand dollars in the case of a conviction for a felony, or one thousand dollars in the case of a conviction for any offense other than a felony.

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(b) The court in its discretion may impose restitution or reparation in excess of the amounts specified in paragraph (a) of this subdivision, provided however that the amount in excess must be limited to the return of the victim's property, including money, or the equivalent value thereof; and reimbursement for medical expenses actually incurred by the victim prior to sentencing as a result of the offense committed by the defendant.

6. Any payment made as restitution or reparation pursuant to this section shall not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of such payment. Added L.1980, c. 290, § 1; amended L.1983, c. 397, § 2; L.1983, c. 468, § 1.

New York Criminal Procedure Law

§ 610.50 Securing attendance of witness by subpoena; fees

1. A witness subpoenaed by the people in a criminal action is entitled to the same fees and mileage as a witness in a civil action, payable by the treasurer of the county upon the certificate of the court or the clerk thereof, stating the number of days the witness actually attended and the number of miles traveled by him in order to attend. In any such action, the court may, by order, direct the county treasurer to pay to such witness a further reasonable sum for expenses, to be specified in the order, and the county treasurer, upon the production of the order or a certified copy thereof, must pay the witness the sum specified therein out of the county treasury. Such certificates shall only be issued by the court or the clerk thereof, upon the production of the affidavit of the witness, stating that he attended as such either on subpoena or request of the district attorney, the number of miles necessarily traveled and the duration of attendance. An officer in any state department who attends as a witness under this section in his official capacity, or in consequence of any official action taken by him, and who receives a fixed sum in lieu of expenses, or who is entitled to receive the actual expenses incurred by him in the discharge of his official duties, is not entitled to the compensation herein provided.

2. A witness subpoenaed by the defendant in a criminal action is not entitled as of right to witness and mileage fees, but the court may in its discretion, by order, direct the county treasurer to pay to such a witness a reasonable sum for expenses, to be specified in the order. Upon the production of the order or a certified copy thereof, the county treasurer must pay the witness the sum specified therein, out of the county treasury.

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New York Civil Procedure Rules and Laws

§ 8001. Persons subpoenaed; examination before trial; transcripts of records

(a) **Persons subpoenaed.** Any person whose attendance is compelled by a subpoena, whether or not actual testimony is taken, shall receive for each day's attendance two dollars for attendance fees and eight cents as travel expenses for each mile to the place of attendance from the place where he was served, and return. There shall be no mileage fee for travel wholly within a city.

(b) **Persons subpoenaed upon an examination before trial.** If a witness who is not a party, or agent or employee of a party, is subpoenaed to give testimony, or produce books, papers and other things at an examination before trial, he shall receive an additional three dollars for each day's attendance.

(c) **Transcripts of records.** Wherever the preparation of a transcript of records is required in order to comply with a subpoena, the person subpoenaed shall receive an additional fee of ten cents per folio upon demand.

New York Penal Law

§ 215.10 Tampering with a witness in the fourth degree

A person is guilty of tampering with a witness when, knowing that a person is or is about to be called as a witness in an action or proceeding, (a) he wrongfully induces or attempts to induce such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at, such action or proceeding, or (b) he knowingly makes any false statement or practices any fraud or deceit with intent to affect the testimony of such person.

Tampering with a witness in the fourth degree is a class A misdemeanor.

§ 215.11¹ Tampering with a witness in the third degree

A person is guilty of tampering with a witness in the third degree when, knowing that a person is about to be called as a witness in a criminal proceeding:

1. He wrongfully compels or attempts to compel such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at such proceeding by means of instilling in him a fear that the actor will cause physical injury to such person or another person; or
2. He wrongfully compels or attempts to compel such person to swear falsely by means of instilling in him a fear that the actor will cause physical injury to such person or another person.

Tampering with a witness in the third degree is a class E felony.

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§ 215.12 Tampering with a witness in the second degree

A person is guilty of tampering with a witness in the second degree when he:

1. Intentionally causes physical injury to a person for the purpose of obstructing, delaying, preventing or impeding the giving of testimony in a criminal proceeding by such person or another person or for the purpose of compelling such person or another person to swear falsely; or

2. He intentionally causes physical injury to a person on account of such person or another person having testified in a criminal proceeding.

Tampering with a witness in the second degree is a class D felony.

§ 215.13 Tampering with a witness in the first degree

A person is guilty of tampering with a witness in the first degree when:

1. He intentionally causes serious physical injury to a person for the purpose of obstructing, delaying, preventing or impeding the giving of testimony in a criminal proceeding by such person or another person or for the purpose of compelling such person or another person to swear falsely; or

2. He intentionally causes serious physical injury to a person on account of such person or another person having testified in a criminal proceeding.

Tampering with a witness in the first degree is a class B felony.

New York Criminal Procedure Law

§ 530.13 Protection of victims of crimes, other than family offenses

1. When any criminal action is pending, and the court has not issued a temporary order of protection pursuant to section 530.12 of this article, the court, in addition to the other powers conferred upon it by this chapter, may for good cause shown issue a temporary order of protection as a condition of a pre-trial release, or as a condition of release on bail or an adjournment in contemplation of dismissal. In addition to any other conditions, such an order may require that the defendant:

(a) stay away from the home, school, business or place of employment of the victim or victims of the alleged offense;

(b) refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the alleged offense and such members of the family or household of such victim or victims as shall be specifically named by the court in such order.

2. The court may issue a temporary order of protection under this section ex parte upon the filing of an accusatory instrument and for good cause shown.

3. The court may issue or extend a temporary order of protection under this section ex parte simultaneously with the issuance of a warrant for the arrest of the defendant.

4. Upon conviction of any offense, where the court has not issued an order of protection pursuant to section 530.12 of this article, the court may, in addition to any other disposition, including a conditional discharge, enter an order of protection. In addition to any other conditions such an order may require that the defendant:

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(a) stay away from the home, school, business or place of employment of the victim or victims of such offense;

(b) refrain from harassing, intimidating, threatening or otherwise interfering with the victim or victims of the offense and such members of the family or household of such victim or victims as shall be specifically named by the court in such order.

5. A copy of an order of protection or a temporary order of protection issued pursuant to subdivision one, two, three, or four of this section shall be filed by the clerk of the court with the sheriff's office in the county in which such victim or victims reside, or, if the victim or victims reside within a city, with the police department of such city. A copy of such order of protection or temporary order of protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order. A copy of the order may also be filed by the victim or victims at the appropriate police department or sheriff's office having jurisdiction. Any subsequent amendment or revocation of such order shall be filed in the same manner as herein provided.

6. In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the victim and the defendant and to any other person affected by the order, a copy of the order of protection or temporary order of protection. The presentation of a copy of such order or a warrant to any police officer or peace officer acting pursuant to his special duties shall constitute authority for him to arrest a person who has violated the terms of such order and bring such person before the court and, otherwise, so far as lies within his power, to aid in securing the protection such order was intended to afford.

7. Punishment for contempt based upon a violation of an order of protection or temporary order of protection issued under this section shall not affect a pending criminal action, nor reduce or diminish a sentence upon conviction for any other crimes or offenses.

8. The chief administrator of the courts shall promulgate appropriate uniform temporary order of protection and order of protection forms to be used throughout the state.

New York Criminal Procedure Law

§ 440.50 Notice to crime victims of case disposition

1. Upon the request of a victim of a crime, the district attorney shall, within sixty days of the final disposition of the case, inform the victim by letter of such final disposition.

2. As used in this section, "victim" means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged.

3. As used in this section, "final disposition" means an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the district attorney, for whatever reason, to not file the case.

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§ 330.20 Procedure following verdict or plea of not responsible by reason of mental disease or defect

1. Definition of terms. As used in this section, the following terms shall have the following meanings:

(a) "Commissioner" means the state commissioner of mental health or the state commissioner of mental retardation and developmental disability.

(b) "Secure facility" means a facility within the state office of mental health or the state office of mental retardation and developmental disabilities which is staffed with personnel adequately trained in security methods and is so equipped as to minimize the risk or danger of escapes, and which has been so specifically designated by the commissioner.

19. Escape from custody; notice requirements. If a defendant is in the custody of the commissioner pursuant to an order issued under this section, and such defendant escapes from custody, immediate notice of such escape shall be given by the department facility staff to: (a) the district attorney, (b) the superintendent of state police, (c) the sheriff of the county where the escape occurred, (d) the police department having jurisdiction of the area where the escape occurred, (e) any person the facility staff believes to be in danger, and (f) any law enforcement agency and any person the facility staff believes would be able to apprise such endangered person that the defendant has escaped from the facility. Such notice shall be given as soon as the facility staff know that the defendant has escaped from the facility and shall include such information as will adequately identify the defendant and the person or persons believed to be in danger and the nature of the danger. The notices required by this subdivision shall be given by the facility staff physician who was treating the defendant or, if unavailable, by the defendant's treatment team leader, but if neither is immediately available, notice must be given by some other member of the clinical staff of the facility. Such notice must be given by any means reasonably calculated to give prompt actual notice. The defendant may be apprehended, restrained, transported to, and returned to the facility from which he escaped by any peace officer, and it shall be the duty of the officer to assist any representative of the commissioner to take the defendant into custody upon the request of such representative.

New York Criminal Procedure Law

§ 390.30 Scope of pre-sentence investigation and report

1. The investigation. The pre-sentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, and the defendant's social history, employment history, family situation, economic status, education, and personal habits. Such investigation may also include any other matter which the agency conducting the investigation deems relevant to the question of sentence, and must include any matter the court directs to be included.

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3. The report. The report of the pre-sentence investigation must contain an analysis of as much of the information gathered in the investigation as the agency that conducted the investigation deems relevant to the question of sentence. The report must also include any other information that the court directs to be included. When it appears that such information would be relevant to the recommendation or court disposition, the report shall also contain an analysis of the victim's version of the offense, the extent of injury or economic loss or damage and the amount of restitution sought by the victim, subject to the availability of such information. Nothing contained in this section shall be interpreted to require that a victim supply information for the preparation of this report.

§ 215.11¹ Employer penalizing witness

Any person who is the victim of a crime upon which an accusatory instrument is based or is subpoenaed to attend a criminal action as a witness pursuant to article six hundred ten of the criminal procedure law and who notifies his employer of his intent to appear as a witness prior to the day of his attendance, shall not on account of his absence from employment by reason of such witness service be subject to discharge or penalty except as hereinafter provided. Upon request of the employer, the party who sought the testimony shall provide verification of the employee's service as a witness. An employer may, however, withhold wages of any such employee attending a criminal action as a witness during the period of such attendance. The subjection of an employee to discharge or penalty on account of his absence from employment by reason of his required attendance as a witness at a criminal action shall constitute a class B misdemeanor.

New York Penal Law

ARTICLE 450—DISPOSAL OF STOLEN PROPERTY

§ 450.10 Disposal of stolen property

1. When property, other than contraband, including but not limited to those items subject to the provisions of sections 410.00, 415.00, 420.00 and 420.05 of this chapter, alleged to have been stolen is in the custody of a police officer or a peace officer, it must be held subject to the order of the court in which the criminal action is pending or, if a request for its release from such custody is made, until the prosecutor has notified the defendant or his attorney of such request and both the prosecution and defense have been afforded a reasonable opportunity for an examination of the property to determine its true value and to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial.

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2. Upon expiration of a reasonable time for the completion of the examination which in no event shall exceed thirty days from the date of receipt by the defense of the notice of request for return of property as provided in subdivision one hereof, the property shall be released to the person making such request after satisfactory proof of such person's entitlement to the possession thereof. The court where appropriate may condition release of the property upon an order that the property be kept intact and available for production if necessary during the pendency of the criminal action. Notwithstanding the foregoing, upon application by either party with notice to the other, the court may order retention of the property if it determines that retention is necessary in the furtherance of justice.

2-a. In the event property subject to the provisions of subdivisions one and two above shall consist of perishables, the court having jurisdiction over the impending matter may order an immediate examination by the prosecution, upon notice to defendant or his attorney, to determine content and value thereof and an opportunity to produce or reproduce, by photographs or other identifying techniques, legally sufficient evidence for introduction at trial. For purposes hereof, perishables shall mean any product or property likely to spoil or decay within the custodial period of time normally afforded pursuant to the provisions of subdivisions one and two of this section.

3. If stolen property comes into the custody of a court, it must, unless temporary retention be deemed necessary in furtherance of justice, be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the court.

4. If stolen property has not been delivered to the owner, the court before which a trial is had for stealing it, may, on proof of his title, order it to be restored to the owner.

5. If stolen property is not claimed by the owner, before the expiration of six months from the conviction of a person for stealing it, the court or other officer having it in custody must, on payment of the necessary expenses incurred in its preservation, deliver it to the county commissioner of social services, or in the city of New York, to the commissioner of social services, to be applied for the benefit of the poor of the county or city, as the case may be.

6. Except in the city of New York, when money or other property is taken from a defendant, arrested upon a charge of an offense, the officer taking it must, at the time, give duplicate receipts therefor, specifying particularly the amount of property taken, one of which receipts he must deliver to the defendant, and the other of which he must forthwith file with the court in which the criminal action is pending.

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7. The commissioners of police of the city of New York may designate some person to take charge of all property alleged to be stolen, and which may be brought into the police office, and all property taken from the person of a prisoner, and may prescribe regulations in regard to the duties of the clerk or clerks so designated, and to require and take security for the faithful performance of the duties imposed by this subdivision, and it shall be the duty of every officer into whose possession such property may come, to deliver the same forthwith to the person so designated.

New York Social Services Law

TITLE 8—EMERGENCY ASSISTANCE FOR AGED, BLIND AND DISABLED PERSONS

§ 303. Character and adequacy

1. It shall be the duty of the social services official to provide emergency assistance, in accordance with regulations of the department, to an eligible aged, blind or disabled person who has one or more of the following needs:

(a) Replacement or repair, as the case may be, of clothing, furniture, food, fuel and shelter; (including repairs to homes owned by aged, blind, and disabled persons and temporary shelter until necessary repairs are completed or replacement shelter is secured), provided such clothing, furniture, food, fuel or shelter was lost or rendered useless as a result of burglary, theft or vandalism, or as a result of fire, flood or other similar catastrophe which could not have been foreseen by such person, and was not under his control. All such losses shall have been reported to and appropriately verified by local officials before such replacement or repair;

(b) Replacement of stolen cash if reported to and appropriately verified by local officials;

(c) Replacement of lost or mismanaged cash by a person who by reason of advanced age, illness, infirmity, mental weakness, physical handicap, intemperance, addiction to drugs, or other cause, has suffered substantial impairment of his ability to care for his property;

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ARTICLE 9-B—ADULT PROTECTIVE SERVICES

Title	Sec.
1. Protective Services	473
2. Short-Term Involuntary Protective Services Orders	473-a

TITLE 1—PROTECTIVE SERVICES

Sec.
473. Protective services.

§ 473. Protective services

1. In addition to services provided by social services officials pursuant to other provisions of this chapter, such officials shall provide protective services in accordance with federal and state regulations to or for individuals without regard to income who, because of mental or physical dysfunction, are unable to manage their own resources, carry out the activities of daily living, or protect themselves from neglect or hazardous situations without assistance from others and have no one available who is willing and able to assist them responsibly. Such services shall include:

(a) receiving and investigating reports of seriously impaired individuals who may be in need of protection;

(b) arranging for medical and psychiatric services to evaluate and whenever possible to safeguard and improve the circumstances of those with serious impairments;

(c) arranging, when necessary, for commitment, guardianship, conservatorship or other protective placement of such individuals either directly or through referral to another appropriate agency, provided, however, that where possible, the least restrictive of these measures shall be employed before more restrictive controls are imposed;

(d) providing services to assist such individuals to move from situations which are, or are likely to become, hazardous to their health and well-being;

(e) cooperating and planning with the courts as necessary on behalf of individuals with serious mental impairments; and

(f) other protective services for adults included in the state's comprehensive annual social services plan, as required by title XX of the Federal Social Security Act.¹

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2. (a) In that the effective delivery of protective services for adults requires a network of professional consultants and services providers, local social services districts shall plan with other public, private and voluntary agencies including but not limited to health, mental health, aging, legal and law enforcement agencies, for the purpose of assuring maximum local understanding, coordination and cooperative action in the provision of appropriate services.

(b) Each local department of social services shall prepare and submit to the commissioner, with the approval of the chief executive officer, or the legislative body in those counties without a chief executive officer, after consultation with appropriate, public, private and voluntary agencies, an annual plan for the provision of adult protective services which shall describe the local implementation of this section including the organization, staffing, mode of operations and financing of the adult protective services as well as the provisions made for purchase of services, inter-agency relations, inter-agency agreements, service referral mechanisms, and locus of responsibility for cases with multi-agency services needs. Local protective services for adults plans shall be an integral component of a district's comprehensive annual social services program plan, as required by title XX of the Federal Social Security Act.¹ The department shall establish a schedule for the submission of such plans. Within thirty days the commissioner shall certify whether or not the local plan fulfills the purposes of and meets the requirements set forth in this section. If he certifies that the local plan does not do so, he shall state the reasons therefor and he may withhold state reimbursement for all or part of the local department's protective services for adults activities. Any social services district aggrieved by a decision of the commissioner under this section shall have the right to a fair hearing in accordance with the appropriate provisions of this chapter. In the event of an adverse fair hearing decision a social services district shall be entitled to judicial review pursuant to section twenty-two of this chapter, provided, however, that the withholding of reimbursement for expenditures incurred pursuant to disapproved portions of the protective services for adults plan shall remain operative pending final resolution of such review.

(c) Notwithstanding the provisions of paragraph (b) of this subdivision, during the period for which the secretary of health

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and human services has waived certain planning provisions of title twenty of the federal social security act for purposes of conducting a demonstration project:

(i) each local department of social services shall not be required to obtain the approval of the chief executive officer of the county, or of the legislative body in those counties without a chief executive officer, for its adult protective services plan, provided however that the provisions of paragraph (b) of subdivision three of section thirty-four-a of this title shall be applicable commencing in nineteen hundred eighty-two; and

(ii) any time periods established by, or pursuant to, paragraph (b) of this subdivision for the submission to the commissioner of local adult protective services plan, or for notification by the commissioner to the local social services districts of approval or disapproval of their plans, shall be waived.

3. Any social services official or his designee authorized or required to determine the need for and/or provide or arrange for the provision of protective services to adults in accordance with the provision of this section, shall have immunity from any civil liability that might otherwise result by reason of providing such services, provided such official or his designee was acting in the discharge of his duties and within the scope of his employment, and that such liability did not result from the willful act or gross negligence of such official or his designee.

4. For the purpose of developing improved methods for the delivery of protective services for adults, the department with the approval of the director of the budget, shall authorize a maximum of five demonstration projects in selected social services districts. Such projects may serve a social services district, part of a district or more than one district. These demonstration projects shall seek to determine the most effective methods of providing the financial management component of protective services for adults. These methods shall include but not be limited to: having a social services district directly provide financial management services; having a social services district contract with another public and/or private agency for the provision of such services; utilizing relatives and/or friends to provide such services under the direction of a social services district or another public and/or private agency and establishing a separate public office to provide financial management services for

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indigent persons. The duration of these projects shall not exceed eighteen months. Furthermore, local social services districts shall not be responsible for any part of the cost of these demonstration projects which would not have otherwise accrued in the provision of protective services for adults. The total amount of state funds available for such financial management services demonstration projects, exclusive of any federal funds shall not exceed three hundred thousand dollars. The commissioner shall require that a final independent evaluation by a not-for-profit corporation be made of the demonstration projects approved and conducted hereunder, and shall provide copies of such report to the governor and the legislature.

§ 473-a. Short-term involuntary protective services orders

1. Definitions. When used in this section unless otherwise expressly stated or unless the context or subject matter requires a different interpretation:

(a) "endangered adult" means a person, age eighteen or over who is:

(i) in a situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to him or her, and

(ii) lacking capacity to comprehend the nature and consequences of remaining in that situation or condition, provided that:

a. refusal by the adult to accept protective services shall not in itself be sufficient evidence of such lack of capacity; and

b. mental illness shall not in itself be sufficient evidence of such lack of capacity.

(b) "short-term involuntary protective services" means those services set forth in section four hundred seventy-three of this article which are provided involuntarily pursuant to the procedures established by this title.

(c) "petitioner" means a social services official initiating a proceeding pursuant to this title.

(d) "respondent" means an allegedly endangered adult.

2. Jurisdiction. The supreme court and the county court shall each have jurisdiction over the special proceeding commenced pursuant to the provisions of this title.

3. Venue. A petition for the provision of short-term involuntary protective services shall be made to:

(a) a term of the supreme court:

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(i) held in the county in which the allegedly endangered adult resides or is found; or

(ii) held in a county, within the same judicial district, adjacent to the county in which the allegedly endangered adult resides or is found; or

(b) the county court:

(i) in the county in which the allegedly endangered adult resides or is found; or

(ii) in a county adjacent to the county in which the allegedly endangered adult resides or is found.

4. Petition. (a) A special proceeding to obtain an order authorizing the provision of short-term involuntary protective services may only be initiated by a social services official.

(b) The petition shall state, insofar as the facts can be ascertained with reasonable diligence:

(i) the name, age and physical description of the allegedly endangered adult; and

(ii) the address or other location where the allegedly endangered adult can be found.

(c) The petition shall state facts showing:

(i) that the adult who is the subject of this petition is an endangered adult as defined in paragraph (a) of subdivision one of this section;

(ii) the specific short-term involuntary protective services petitioned for, how such services would remedy the situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to the allegedly endangered adult, and why such services are not overbroad as to extent or duration;

(iii) that the short-term involuntary protective services being applied for are necessitated by the situation or condition described in paragraph (a) of subdivision one of this section;

(iv) that other voluntary protective services have been tried and have failed to remedy the situation, and that a future, voluntary, less restrictive alternative would not be appropriate or would not be available;

(v) if a change in the allegedly endangered adult's physical location is being applied for, that remedy of the dangerous situation or condition described in paragraph (a) of subdivision one of this section is not appropriate in existing physical surroundings of the allegedly endangered adult;

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(vi) any inconsistency known to petitioner between the proposed short-term involuntary protective services and the allegedly endangered adult's religious belief;

(vii) that if it reasonably appears that the allegedly endangered adult does not understand the English language, that reasonable efforts have been made to communicate with the allegedly endangered adult in a language he or she understands;

(viii) that no prior application has been made for the relief requested or for any similar relief, or if prior application has been made, the determination thereof, and the new facts, if any, that were not previously shown which warrant a renewal of the application.

(d) The petition shall be verified. Any allegations which are not based upon personal knowledge shall be supported by affidavits provided by a person or persons having such knowledge. Such affidavits shall be attached to the petition.

5. Commencement of proceedings. (a) A special proceeding to obtain an order authorizing the provision of short-term involuntary protective services shall be commenced by service of an order to show cause, the petition and supporting affidavits, if any.

(b) The order to show cause shall set forth:

(i) in bold type, on its face, the following:

WARNING

IF YOU DO NOT APPEAR IN COURT YOUR LIFE AND LIBERTY MAY BE SERIOUSLY AFFECTED. FOR FREE INFORMATION CONCERNING YOUR LEGAL RIGHTS CALL OR VISIT

(ii) the protective services to be provided if the petition is granted;

(iii) the date, place and time of the hearing to determine whether the petition is to be granted;

(iv) that the respondent is entitled to counsel at all stages of the proceeding, that upon granting the order to show cause, the court shall assign counsel to assist the respondent, and that respondent is free at any time to discharge the counsel assigned by the court. The name, address and telephone number of the assigned counsel shall be inserted at the end of the warning referred to in subparagraph (i) of this paragraph;

(v) that if the respondent or retained counsel does not appear at the hearing to determine whether the petition is to be granted, the court will appoint a guardian ad litem;

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(vi) that if the respondent discharges the assigned counsel prior to the hearing to determine if the petition is to be granted, such counsel shall report this fact to the court no later than the commencement of the hearing, and shall appear at the hearing, unless otherwise relieved by the court. In the event that neither the respondent nor his retained counsel appears at the hearing, the court may appoint the person previously assigned as counsel to act as the guardian ad litem; and

(vii) that a copy of the order to show cause, the petition, and supporting affidavits, if any, shall be served upon the respondent.

(c) Petitioner shall cause the order to show cause, the petition, and supporting affidavits, if any, to be delivered to the counsel assigned by the court.

(d) The order to show cause shall be made returnable within forty-eight hours following its issuance, unless such forty-eight hour period ends on a day in which the court is not in session, in which case the return date shall be the first business day following issuance of the order to show cause.

6. Service. (a) Service of the order to show cause, the petition, and supporting affidavits, if any, shall be made upon the respondent by any of the methods permitted by section three hundred eight of the civil practice law and rules. Notwithstanding any other provision of law to the contrary, Saturday and Sunday service is valid.

(b) The respondent shall be authorized to answer either orally or in writing.

7. Hearing. (a) Upon the return date designated in the order to show cause issued pursuant to subdivision five of this section a hearing shall be held forthwith.

(b) The allegedly endangered adult shall be entitled to be present at the hearing.

(c) Adjournments shall be permitted only for good cause shown. In granting adjournments the court shall consider the need to provide short-term involuntary services expeditiously.

(d) At the conclusion of the hearing the court shall issue for the record a statement of its findings of fact and conclusions of law.

8. Preference. The special proceeding authorized by this title shall have preference over all other causes in all courts of appropriate jurisdiction.

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9. Findings. After a hearing, the court must find, in order to authorize the provision of short-term involuntary protective services, that all of the material allegations as specified in paragraph (c) of subdivision four of this section have been admitted or proven by clear and convincing proof.

10. Judgment. (a) The court, upon making the findings required by subdivision nine herein, shall direct the entry of a judgment authorizing the provision of short-term involuntary protective services to an endangered adult.

(b) A judgment authorizing short-term involuntary protective services to be provided to an endangered adult:

(i) shall prescribe those specific protective services, authorized by section four hundred seventy-three of this article, which are to be provided and what person or persons are authorized or ordered to provide them; and

(ii) shall not provide for any forcible entry unless the persons so entering are accompanied by a peace officer, acting pursuant to his special duties, or a police officer, who is a member of an authorized police department or force or of a sheriff's department;

(iii) shall require persons acting under subparagraphs (i) and (ii) of this paragraph to submit a written report to the court within one week following the commencement of the ordered protective services.

(c) The judgment may order any other public or law enforcement official to render such assistance and cooperation as shall be within his legal authority, as may be required to further the objects of this title.

(d) The judgment shall not order removal to a hospital, as that term is defined in section 1.03 of the mental hygiene law.

(e) Issuance of the judgment shall not be evidence of the competency or incompetency of the endangered adult.

(f) No order issued pursuant to this title shall extend for more than seventy-two hours. An original order may be renewed once for up to another seventy-two hour period upon showing by the petitioner to the court that continuation is necessary to remedy the original situation or condition. No further renewals shall be permitted.

(g) In no event shall the short-term involuntary services authorized to be provided to an endangered adult by the judgment be broader than those which are necessary to remedy the situation or condition which poses an imminent risk of death or imminent risk of serious physical harm to the endangered adult.

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(h) Notice of the judgment rendered by the court shall be given to the respondent personally, or if personal service is not possible in whatever other fashion the court shall prescribe.

11. Appeals. Appeals arising from the issuance of judgments pursuant to the provisions of this title shall be expedited.

12. The assigned counsel and the guardian ad litem appointed by the court pursuant to this title shall be reimbursed for their services pursuant to section thirty-five of the judiciary law.

13. Nothing in this title precludes the simultaneous commencement of a proceeding under this title and a proceeding under section 9.43 of the mental hygiene law, or a proceeding under article seventy-seven or article seventy-eight of such law. A pending proceeding under section 9.43 of the mental hygiene law or under article seventy-seven or article seventy-eight of the mental hygiene law does not preclude commencement of a proceeding under this title.

14. No existing right or remedy of any character shall be lost, impaired or affected by reason of this title.

New York Criminal Procedure Law

§ 530.11 Procedures for family offense matters

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment, menacing, reckless endangerment, an assault in the second degree or assault in the third degree or an attempted assault between spouses or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:

- (a) persons related by consanguinity or affinity;
- (b) persons legally married to one another; and
- (c) persons formerly married to one another.

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate probation officers, warrant officers, sheriffs, police officers, district attorneys or any other law enforcement officials, to inform any petitioner or complainant bringing a proceeding under this section before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

- (a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;
- (b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end family disruption and obtain protection. That referrals for counseling, or counseling services, are available through probation for this purpose;

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(c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;

(d) That a proceeding or action subject to the provisions of this section is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest, or request for arrest, if any;

(e) That subject to the provisions of section eight hundred thirteen of the family court act, the filing of such accusatory instrument or family court petition constitutes a final choice of forum after seventy-two hours have elapsed from such filing and bars any subsequent proceeding in an alternative court based on the same offense. However, in the event that a finding by the court on the merits of such a complaint or petition occurs before seventy-two hours have elapsed, such finding shall be deemed to constitute a final choice of forum and shall bar any subsequent proceeding in an alternative court based on the same offense;

(f) That an arrest may precede the commencement of a family court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding.

3. Official responsibility. No official or other person designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

4. Notification to the family court of accusatory instrument. Pursuant to section two hundred fifty-four-a of the judiciary law the clerk of the court shall notify the family court in which a family offense proceeding is pending that an accusatory instrument has been filed alleging the same act alleged in the family court petition.

5. Official forms. The chief administrator of the courts shall prescribe appropriate forms to implement subdivisions two and four of this section.

§ 530.12 Protection for victims of family offenses

1. When a criminal action is pending involving a complaint charging any crime or violation between spouses, parent and child, or between members of the same family or household, as defined in section 530.11 of this article, the court, in addition to any other powers conferred upon it by this chapter may issue a temporary order of protection as a condition of any order of recognizance or bail or an adjournment in contemplation of dismissal. In addition to any other conditions, such an order may require the defendant:

(a) to stay away from the home, school, business or place of employment of the family or household member;

(b) to permit a parent to visit the child at stated periods;

(c) to abstain from offensive conduct against the child or against the family or household member or against any person to whom custody of the child is awarded;

(d) to refrain from acts of commission or omission¹ that tend to make the home not a proper place for the family or household member.

2. Notwithstanding any other provision of law, a temporary order of protection issued or continued by a family court pursuant to section eight hundred thirteen of the family court act shall continue in effect, absent action by the appropriate criminal court pursuant to subdivision three of this section, until the defendant is arraigned upon an accusatory instrument filed pursuant to section eight hundred thirteen of the family court act in such criminal court.

3. The court may issue a temporary order of protection ex parte upon the filing of an accusatory instrument and for good cause shown.

4. The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant for the arrest of defendant.

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5. Upon conviction of any crime or violation between spouses, parent and child, or between members of the same family or household, the court may in addition to any other disposition, including a conditional discharge, enter an order of protection. In addition to any other conditions, such an order may require the defendant:

(a) to stay away from the home, school, business or place of employment of the family or household member, the other spouse or the child;

(b) to permit a parent to visit the child at stated periods;

(c) to abstain from offensive conduct against the child or against the family or household member or against any person to whom custody of the child is awarded; or

(d) to refrain from acts of commission or omission¹ that tend to make the home not a proper place for the family or household member.

6. A copy of an order of protection or a temporary order of protection issued pursuant to subdivision one, two, three, four or five of this section shall be filed by the clerk of the court with the sheriff's office in the county in which the complainant resides, or, if the complainant resides within a city, with the police department of such city. A copy of such order of protection or temporary order of protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order. A copy of the order may also be filed by the complainant at the appropriate police department or sheriff's office having jurisdiction. Any subsequent amendment or revocation of such order shall be filed in the same manner as herein provided.

7. A family offense subject to the provisions of this section which occurs subsequent to the issuance of an order of protection under this chapter shall be deemed a new offense for which the complainant may elect to file a new accusatory instrument or a family court petition.

8. In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the complainant and defendant and defense counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection. The presentation of a copy of such order or a warrant to any peace officer acting pursuant to his special duties or police officer shall constitute authority for him to arrest a person who has violated the terms of such order and bring such person before the court and, otherwise, so far as lies within his power, to aid in securing the protection such order was intended to afford.

9. If no warrant, order or temporary order of protection has been issued by the court, and an act alleged to be a family offense as defined in section 530.11 of this chapter is the basis of the arrest, the magistrate shall permit the complainant to file a petition, information or accusatory instrument and for reasonable cause shown, shall thereupon hold such respondent or defendant, admit to, fix or accept bail, or parole him for hearing before the family court or appropriate criminal court as the complainant shall choose in accordance with the provisions of section 530.11 of this chapter.

10. Punishment for contempt based on a violation of an order of protection or temporary order of protection shall not affect the original criminal action, nor reduce or diminish a sentence upon conviction for the original crime or violation alleged therein or for a lesser included offense thereof.

11. If a defendant is brought before the court for failure to obey any lawful order issued under this chapter and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, the court may:

(a) revoke an order of recognizance or bail and commit the defendant to custody; or

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(b) restore the case to the calendar when there has been an adjournment in contemplation of dismissal and commit the defendant to custody or impose or increase bail pending a trial of the original crime or violation; or

(c) revoke a conditional discharge in accordance with section 410.70 of this chapter and impose probation supervision or impose a sentence of imprisonment in accordance with the penal law based on the original conviction; or

(d) revoke probation and impose a sentence of imprisonment in accordance with the penal law based on the original conviction. In addition, if the act which constitutes the violation of the order of protection or temporary order of protection is a crime or a violation the defendant may be charged with and tried for that crime or violation.

12. The chief administrator of the courts shall promulgate appropriate uniform temporary orders of protection and orders of protection forms to be used throughout the state.

Category		Citation
1.	Victim Compensation Program	15B-1 et seq.
1.1	Responsible Agency	15B-3
1.2	Eligible Claimants	15B-4, 15B-11(a)(3)
1.3	Losses Covered	15B-2(j), 15B-4
1.4	Minimum and Maximum Award	15B-11(e),(f),(g)
1.5	Required to Show Financial Need	
1.6	Required to Report Crime - Time Limit	15B-11(a)(2)
1.7	Filing of Claim - Time Limit	15B-11(a)(1)
1.8	Emergency Award	
1.9	Funding	143B-475(e)
2.	Restitution	
2.1	Sentencing Option	15A-1343(b)(9),d; 15A-1374(b)(11a); 148-57.1
2.2	Mandatory Condition of Probation	
2.3	Mandatory Condition of Parole	
2.4	Mandatory Sentence	15-8 (restitution of stolen property)
2.5	Administration/Enforcement	148-33.2 (by offender on work release)
3.	Escrow and Forfeiture of Offender Profits	
4.	Witness Fees	7A-314 et seq.
5.	Victim's Bill of Rights	
6.	Protection from Intimidation	
6.1	Crime Defined	
6.2	Protective Orders	14-226
7.	Victim Notification	
7.1	of Compensation Program	15B-6(3)
7.2	of Witness Fees	
7.3	of Final Disposition	
7.4	of Plea Agreement	
7.5	of Cancelled Proceeding	
7.6	of Right to Participate in Sentencing Hearing	
7.7	of Parole Hearing	
7.8	of Release of Offender	
7.9	of Escape of Offender	
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	
8.2	Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	15-11.1
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	108A-99, 108A-102
12.4 Abuse, Neglect, Exploitation - Protective Services	108A-104 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	143B-480.2
13.2 Special Programs	143B-480.2
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	50B-1 et seq.
14.1 Protective Orders	50B-3 et seq.
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	15B-12(d),(g)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	15B-12(i) (victim compensation records)
15.4 Sexual Assault Counselor Privilege	

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North Carolina General Statutes

CHAPTER 832
HOUSE BILL 177
AN ACT PROVIDING COMPENSATION FOR INNOCENT VICTIMS OF CRIME.
The General Assembly of North Carolina enacts:
Sec. 1. A new Chapter is added to the General Statutes to read:

"CHAPTER 15B.
"Victims Compensation.
G.S. "§ 15B-1. Short title.--This Chapter may be cited as the
§ 15B-1 North Carolina Crime Victims Compensation Act".
G.S. "§ 15B-2. Definitions.--As used in this Chapter, unless the
§ 15B-2 context requires otherwise:

(a) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of two thousand dollars (\$2,000) 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 home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(b) "Claimant" means any of the following persons who claims an award of compensation under this Chapter:

- (1) A victim;
- (2) A dependent of a deceased victim;
- (3) A third person other than a collateral source;
- (4) A person who is authorized to act on behalf of a victim, a dependent, or a third person who is not a collateral source.

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious conduct.

(c) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to him from any of the following sources:

- (1) The offender;
- (2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;
- (3) Social security, medicare, and medicaid;
- (4) State-required, temporary, nonoccupational disability insurance;
- (5) Worker's compensation;
- (6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim for loss that he sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services, or benefits for disability.

"Commission" means the Crime Victim's Compensation

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- (d) Commission established by G.S. 15B-3.
- (e) 'Criminally injurious conduct' means conduct that occurs or is attempted in this State which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or 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.
- (f) 'Dependent' means an individual wholly or substantially dependent upon the victim for care and support and includes a child of the victim born after his death.
- (g) 'Dependent's economic loss' means loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.
- (h) 'Dependent's replacement service loss' means loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.
- (i) 'Director' means the director of the Commission appointed pursuant to G.S. 15B-6(2).
- (j) 'Economic loss' means economic detriment consisting only of allowable expense, work loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement service loss. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment.
- (k) 'Noneconomic detriment' means pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.
- (l) '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.
- (m) 'Victim' means a person who suffers personal injury or death proximately caused by criminally injurious conduct.
- (n) 'Work loss' means loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred by him to obtain 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 appropriate substitute work that he was capable of performing but unreasonably failed to undertake.
- G.S. § 15B-3. Crime Victims Compensation Commission.--(a) There is established the Crime Victims Compensation Commission of the Department of Crime Control and Public Safety, consisting of five members to be appointed as follows:
- (1) Three members by the Governor, one of whom shall be a physician and one of whom shall be an attorney;
 - (2) One member by the General Assembly upon the recommendation of the President of the Senate under G.S. 120-121; and
 - (3) One member by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121.
- (b) Members shall serve terms of four years. A member shall continue to serve until his successor is duly appointed, but a holdover under this provision does not affect the expiration date of the succeeding term.

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- (c) In case of a vacancy on the Commission before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (a). Vacancies in legislative appointments shall be filled under G.S. 120-122.
- (d) The Commission shall elect one of its members as chairman to serve until the expiration of his term.
- (e) A majority of the Commission constitutes a quorum to transact business.
- (f) Members shall receive compensation and reimbursement for expenses as provided in G.S. 138-5.
- G.S. § 15B-4. Award of compensation.--Subject to the limitations of G.S. 15B-22, the Commission shall award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for an award of compensation have been met.
- G.S. § 15B-5. Attorney General to represent State.--The Attorney General shall represent the interest of the State when:
- (1) A decision of the Commission is appealed to the courts; and
 - (2) When the State is sued or when it brings or enters a lawsuit pursuant to this Chapter.
- G.S. § 15B-6. Powers of the Commission.--In addition to powers authorized by this Chapter and Chapter 150A, the Commission may:
- (1) Establish and maintain a principal office and other necessary offices within this State;
 - (2) Employ a Director, investigators, and other necessary personnel;
 - (3) Publicize widely the availability of compensation and information regarding the filing of claims for compensation; and
 - (4) Adopt rules necessary to carry out the purposes of this Chapter.
- G.S. § 15B-7. Filing of application for compensation award; filing fee; contents.--(a) A claim for an award of compensation is commenced by filing an application for an award with the Commission. Each application shall be accompanied by a filing fee of ten dollars (\$10.00) unless waived pursuant to G.S. 15B-8(b). The application shall be in a form prescribed by the Commission and shall contain the following information:
- (1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant, and the relationship of the claimant to the victim;
 - (2) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;
 - (3) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;
 - (4) The law enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;
 - (5) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;

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- (6) The total amount of the economic loss that the victim, a dependent, or the claimant sustained as a result of the criminally injurious conduct, without regard to the financial limitations set forth in G.S. 15B-11(f) and (g).
 - (7) The amount of benefits or advantages that the victim, a dependent, or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;
 - (8) Whether the claimant is the spouse, parent, child, brother, or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;
 - (9) A release authorizing the Commission and the Commission's staff to obtain any report, document, or information that relates to the determination of the claim for an award of compensation;
 - (10) Any additional relevant information that the Commission may require. The Commission may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.
- (b) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or a State officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent application is guilty of a misdemeanor if the application is for a claim of not more than four hundred dollars (\$400.00). If the application is for a claim of more than four hundred dollars (\$400.00), the person is guilty of a Class I felony.
- G.S. § 15B-8. Procedure for filing application; indigent applicants.--(a) The Commission shall establish a procedure for the filing, recording, and processing of applications for an award of compensation.
- (b) If an applicant files an affidavit stating that he is indigent and that payment of the filing fee would create a financial hardship for him, the Commission may accept the application for filing without payment of the filing fee. If the application is accepted without payment of the filing fee and an award is made pursuant to the application, the amount of the award shall be reduced by the amount of the filing fee.
- G.S. § 15B-9. Administrative Procedure Act applicable.--Except as otherwise provided in this Chapter, Chapter 150A applies to the Commission.
- G.S. § 15B-10. Initial investigation and decision; appeal.--(a) The Director shall assign each claim to an investigator as soon as it is filed.
- (b) The investigator who investigates the claim shall file a report with the Director. The Director shall make an initial decision on the claim based on the application, the investigator's report, and any other written evidence he thinks necessary.
- (c) If the claimant is satisfied with the Director's decision, it shall be submitted to the Commission for its approval.
- (d) If the claimant is not satisfied with the Director's decision, the claimant may appeal to the Commission for a full hearing.
- (e) The Commission may not employ hearing officers but shall conduct its own hearings. The Director shall represent the interest of the State at a full hearing before the Commission.
- G.S. § 15B-11. Grounds for denial of claim or reduction of award.--(a) The Commission may not approve an award of compensation:

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- (1) To a claimant who did not file his application for an award within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he is seeking an award;
 - (2) If the criminally injurious conduct upon which the claim is based was not reported to a law enforcement officer or agency within 72 hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the 72-hour period;
 - (3) To a claimant if the award would unjustly benefit the offender or his accomplice. Unless a determination is made that the interests of justice require that an award be approved in a particular case, an award of compensation may not be made to the spouse of, or to a person living in the same household with, the offender or an accomplice of the offender, or to the parent, child, brother, or sister of the offender or his accomplice;
 - (4) If the injury occurred while the victim was confined in any state, county, or city prison, correctional facility, or local confinement facility.
- (b) The Commission, upon a finding of contributory misconduct by the claimant or by a victim through whom he claims, may deny a claim or reduce an award of compensation.
- (c) The Commission, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies with regard to the criminally injurious conduct that is the basis for the award, may deny a claim, reduce an award of compensation, and may reconsider a claim already approved.
- (d) After reaching a decision to approve an award of compensation, but before notifying the claimant, the Commission shall require the claimant to submit current information as to collateral sources on forms prescribed by the Commission. The Commission shall reduce an award or deny a claim for an award that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from collateral sources. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitations set forth in subsections (f) and (g).
- (e) Compensation may not be awarded if the economic loss is less than one hundred dollars (\$100.00).
- (f) Compensation for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars (\$200.00) per week.
- (g) Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or the death of that victim, together with attorney fees awarded under G.S. 15B-15, may not exceed twenty thousand dollars (\$20,000) in the aggregate.
- (h) The Commission's right to reconsider or reopen a claim does not affect the finality of its decision for the purpose of judicial review.

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G.S. § 15B-12. Evidence.—(a) The hearing shall be conducted so as to disclose all material facts and issues. The Commission may examine or cross-examine witnesses. The Commission may call witnesses or require evidence not produced by the parties and may continue the hearing until some subsequent time to permit a more complete presentation of the claim. A claimant may appear in his own behalf or may be represented by counsel. The usual common law and statutory rules of evidence do not apply at the hearing.

The Commission may hear any information that will assist it in determining the factual basis of the claim.

(b) There is no privilege, except the privileges arising from the attorney-client relationship and the North Carolina and United States Constitutions, as to communications or records that are relevant to the physical, mental, or emotional condition of the claimant or victim in a proceeding under this Chapter in which that condition is an element.

(c) If the mental, physical, or emotional condition of a victim or claimant is material to a claim for an award of compensation, the Commission 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 and upon notice to the person to be examined and to the claimant. 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 who performs the examination or autopsy to file with the Commission a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis, and other conclusions, and reports of earlier examinations of the same conditions. On request of the person examined, the Commission shall furnish him a copy of the report. If the victim is deceased, the Commission on request, shall furnish the claimant a copy of the report.

(d) The Commission may request that law enforcement officers employed by the State or any political subdivision thereof provide it with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The Commission may also request that prosecuting attorneys, law enforcement officers, and State agencies conduct investigations and provide information necessary to enable the Commission to determine whether, and the extent to which, a claimant qualifies for an award of compensation. Information obtained pursuant to this subsection is subject to the same privilege against public disclosure that may be asserted by the providing source.

(e) The Commission may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(f) The Commission may not request the victim or the claimant to supply any evidence that would not be admissible at a trial under G.S. 8-58.6.

(g) Notwithstanding any provision to the contrary relating to the confidentiality of juvenile records, the Commission shall have access to the records of juvenile proceedings which bear upon an application for compensation, but to the extent possible, it shall maintain the confidentiality of those records.

(h) The Commission may exclude from a hearing of any matter at issue all persons, except those engaged in the hearing, during

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the taking of medical information and law enforcement investigative records and information as evidence.

(i) The Commission shall make available for public inspection all final orders, decisions, and opinions together with the hearing records and all materials that were before it at the time the final order, decision, or opinion was made, except that medical information, law enforcement investigative records and information, and other materials for good cause held confidential shall not be open to the public.

G.S. § 15B-13. Contempt sanction not available.—If a person refuses to comply with an order under this Chapter or asserts a privilege except one authorized by G.S. 15B-12(b) so as to withhold or suppress evidence relevant to a claim for an award of compensation, the Commission 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 Commission 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 mental or physical examination.

G.S. § 15B-14. Effect of prosecution or conviction of offender.—(a) The Commission may approve an award of compensation whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or a writ of certiorari is pending, or a rehearing or new trial has been ordered.

(b) The Commission may, upon a request of the Attorney General, suspend the proceedings in any claim for an award of compensation pending disposition of a criminal prosecution that has been commenced or is imminent.

G.S. § 15B-15. Attorney and witness fees.—(a) As part of an order, the Commission shall determine and award reasonable attorney fees, commensurate with services rendered, to the attorney representing a claimant in a proceeding under this Chapter. Attorney fees may be denied upon a finding that the claim or appeal is frivolous. Attorney fees may be awarded whether or not an award of compensation is approved. An attorney may not contract for or receive any larger sum than the amount allowed under this section.

(b) Each witness called by the Commission to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases.

G.S. § 15B-16. Manner of payment; non-assignability and exemptions.—(a) The Commission 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 expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection (b), the part of an award that may not be paid in a lump sum shall be paid in installments.

(b) Upon request of the claimant, the Commission may commute future economic loss, other than allowable expense, to a lump sum but only upon a finding by the Commission that:

- (1) The award in a lump sum will promote the interests of the claimant; or
- (2) The present value of all future economic loss other than allowable expense does not exceed one thousand dollars (\$1,000).

(c) An award for future economic loss payable in installments may be made only for a period as to which the Commission can reasonably determine future economic loss. The Commission 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.

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(d) An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

G.S. "§ 15B-17. Award not subject to taxation or execution.---(a) An award is exempt from taxation.

§ 15B-17 (b) An award is not subject to execution, attachment, garnishment, or other process, except that, upon receipt of an award by a claimant, the part of the award that is for allowable expense is not exempt from such an action by a creditor to the extent that he provides products, services, or accommodations the costs of which are included in the award, and the part of the award that is for work loss is not exempt from such an action to secure payment of alimony, maintenance, or child support.

G.S. "§ 15B-18. Subrogation by State.---(a) If compensation is § 15B-18 awarded, the State is subrogated to all the claimant's rights to receive or recover benefits or advantages for economic loss from a source that is, or if readily available to the victim or claimant would be, a collateral source, to the extent of the compensation awarded.

(b) The State is an eligible recipient for restitution under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant shall give the Commission prior written notice of the proposed action. After receiving the notice the Commission shall immediately notify the Attorney General who shall promptly:

- (1) Join in the action as a party plaintiff to recover compensation awarded;
- (2) Require that the claimant bring the action in his individual name as a trustee in behalf of the State to recover compensation awarded; or
- (3) Reserve its rights and do neither in the proposed action. If, as requested by the Attorney General, the claimant brings the action as trustee and recovers compensation awarded by the Commission, he may deduct from the compensation recovered in behalf of the State the reasonable expenses, including attorney fees, allocable by the court for that recovery.

(d) If a judgment or verdict separately indicates 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 noneconomic detriment, punitive damages, and economic loss.

(e) Any funds recovered by the State pursuant to this section shall be paid to the General Fund.

G.S. "§ 15B-19. Subrogation by collateral sources prohibited.--- § 15B-19 Subrogation rights that a collateral source may have may not extend to a recovery from a claimant of all or any part of an award made under this Chapter. A collateral source may not apply in the name of a claimant or otherwise for an award of compensation based upon injury to a claimant to whose rights the collateral source may be subrogated.

G.S. "§ 15B-20. Publicity.---Any law enforcement agency that § 15B-20 investigates an offense committed in this State involving personal injury shall make reasonable efforts to provide information to the victim of the offense and his dependents concerning the availability of an award of compensation and advise those persons that an application for an award may be obtained from the Commission.

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G.S. "§ 15B-21. Annual report.---The Commission shall prepare and § 15B-21 transmit annually to the Governor and the General Assembly a report of its activities. The report shall include the number of claims filed; the number of awards made and the amount of each award; a statistical summary of claims denied and awards made, including the average size of claims and awards; separate listing of the administrative costs, compensation of commissioners and Commission personnel, and the amount awarded as attorney fees. The Attorney General and State Auditor shall assist the Commission in the preparation of the report required by this section.

G.S. "§ 15B-22. Disbursements.---If the Commission cannot pay § 15B-22 compensation awarded under this Chapter due to insufficient appropriations, the Commission shall delay payment until sufficient funds are available and shall make no further awards of compensation until sufficient appropriations are made."

G.S. Sec. 2. G.S. 120-123 is amended by adding a new § 120-123 subdivision to read:

"(33) The Crime Victims Compensation Commission, as established by G.S. 15B-3."

G.S. Sec. 3. G.S. 143B-475 is amended by adding a new § 143B-475 subsection to read:

"(e) The Crime Victims Compensation Commission established by Chapter 15B is vested in the Department of Crime Control and Public Safety. The Commission shall be administered as provided in Chapter 15B."

Sec. 4. Notwithstanding G.S. 15B-3, the initial five members of the Crime Victims Compensation Commission shall be appointed within 30 days after the effective date of this act, and shall serve initial terms as follows:

- (1) The General Assembly's appointee recommended by the President of the Senate shall serve three years.
- (2) The General Assembly's appointee recommended by the Speaker of the House of Representatives shall serve three years.
- (3) The Governor's appointees shall serve four years except that one of the Governor's three appointees shall serve two years.

Sec. 5. Any funds appropriated to implement the provisions of this act that have not been expended at the end of the fiscal year do not revert.

Sec. 6. This act shall become effective when funds are appropriated by the General Assembly to the Department of Crime Control and Public Safety to implement the provisions of this act. No claims may be filed under this act for any criminally injurious conduct occurring before the effective date of this act or after December 31, 1991. Moneys remaining after payment of claims under this Chapter shall revert to the General Fund on July 1, 1993. This act is repealed effective July 1, 1993.

In the General Assembly read three times and ratified, this the 20th day of July, 1983.

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§ 15-8. Stolen property returned to owner.

Upon the conviction of any person for robbing or stealing any money, goods, chattels, or other estate of any description whatever, the person from whom such goods, money, chattels or other estate were robbed or stolen shall be entitled to restitution thereof; and the court may award restitution of the articles so robbed or stolen, and make all such orders and issue such writs of restitution or otherwise as may be necessary for that purpose. (21 Hen. VIII, c. 11; R.C., c. 35, s. 34; Code, s. 1201; Rev., s. 3153; C.S., s. 4519; 1943, c. 543.)

§ 15-9: Repealed by Session Laws 1973, c. 1286, s. 26.

§ 15A-1343. Conditions of probation.

(a) In General. — The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. — As regular conditions of probation, a defendant must:

- (6) Pay ten dollars (\$10.00) per month for probation supervision to the clerk of superior court. The clerk of superior court must transmit this money to the State of North Carolina to be deposited in the General Fund. No person placed on supervised probation may be required to pay more than one supervision fee per month.
- (7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment.
- (8) Notify the probation officer if he fails to obtain or retain satisfactory employment.
- (9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection

(d) Restitution as a Condition of Probation. — As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall take into consideration the resources of the defendant, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation. The amount must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the offense or offenses is greater than that which the defendant is able to pay. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved

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party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, "restitution" shall mean compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action. As used herein, "reparation" shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein, "aggrieved party" shall include individuals, firms, corporations, associations or other organizations, and government agencies, whether federal, State or local. Provided, that no government agency shall benefit by way of restitution except for particular damage or loss to it over and above its normal operating costs. A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done. Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders and to provide for compensation to victims of crime, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State.

(g) Probation Officer May Determine Payment Schedules. — If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 8-10; 1979, c. 662, s. 1; c. 801, s. 3; c. 830, s. 12; 1981, c. 530, ss. 1, 2; 1983, c. 135, s. 1; c. 561, ss. 1-6; c. 567, s. 2; c. 712, s. 1.)

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§ 15A-1374. Conditions of parole.

(a) In General. — The Parole Commission may in its discretion impose conditions of parole it believes reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him to do so. The Commission must provide as an express condition of every parole that the parolee not commit another crime during the period for which the parole remains subject to revocation. When the Commission releases a person on parole, it must give him a written statement of the conditions on which he is being released.

(b) Appropriate Conditions. — As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(12) Satisfy other conditions reasonably related to his rehabilitation.

(c) Supervision Fee. — The Commission must require as a condition of parole that the parolee pay a supervision fee of ten dollars (\$10.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court designated by the Commission. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month. (1977, c. 711, s. 1; 1979, c. 749, s. 11; 1983, c. 562.)

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§ 148-33.2. Restitution by prisoners with work-release privileges.

(a) As a rehabilitative measure, the Secretary of the Department of Correction is authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of attaining work-release privileges pursuant to a plea arrangement made under provisions of G.S. 15A-1021. The Secretary shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented, the Secretary shall state in writing why they cannot reasonably implement the order, and forward the written statement to the sentencing court. The

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sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Secretary of the Department of Correction is further authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining work-release privileges. The Secretary shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a further rehabilitative measure, restitution or reparation should be ordered or recommended to the Secretary of Correction to be imposed as a condition of attaining work-release privileges. If the court determines that restitution or reparation should not be ordered or recommended as a condition of attaining work-release privileges, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of attaining work-release privileges, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Secretary of the Department of Correction shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of work release, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court.

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§ 148-57.1. Restitution as a condition of parole.

(a) As a rehabilitative measure, the Parole Commission is authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of parole pursuant to a plea arrangement made under the provisions of G.S. 15A-1021. The Parole Commission shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot reasonably be implemented, the Parole Commission shall state in writing why it cannot reasonably implement the order, and forward the written statement to the sentencing court. The sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Parole Commission is further authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition

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of attaining parole. The Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission to be imposed as a condition of parole. If the court determines that restitution or reparation should not be ordered or recommended as a condition of parole, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of parole, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15A-1343(d). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of his parole, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court. (1977, c. 614, s. 8; 1977, 2nd Sess., c. 1147, s. 36.)

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§ 7A-314. Uniform fees for witnesses; experts; limit on number.

(a) A witness under subpoena, bound over, or recognized, other than a salaried State, county, or municipal law-enforcement officer, or an out-of-state witness in a criminal case, whether to testify before the court, Judicial Standards Commission, jury of view, magistrate, clerk, referee, commissioner, appraiser, or arbitrator shall be entitled to receive five dollars (\$5.00) per day, or fraction thereof, during his attendance, which, except as to witnesses before the Judicial Standards Commission, must be certified to the clerk of superior court.

(b) A witness entitled to the fee set forth in subsection (a) of this section, and a law-enforcement officer who qualifies as a witness, shall be entitled to receive reimbursement for travel expenses as follows:

- (1) A witness whose residence is outside the county of appearance but within 75 miles of the place of appearance shall be entitled to receive mileage reimbursement at the rate currently authorized for State employees, for each mile necessarily traveled from his place of residence to the place of appearance and return, each day.
- (2) A witness whose residence is outside the county of appearance and more than 75 miles from the place of appearance shall be entitled to receive mileage reimbursement at the rate currently authorized State employees for one round-trip from his place of residence to the place

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of appearance. A witness required to appear more than one day shall be entitled to receive reimbursement for actual expenses incurred for lodging and meals not to exceed the maximum currently authorized for State employees, in lieu of daily mileage.

(c) A witness who resides in a state other than North Carolina and who appears for the purpose of testifying in a criminal action and proves his attendance may be compensated at the rate of ten cents (10¢) a mile for one round-trip from his place of residence to the place of appearance, and five dollars (\$5.00) for each day that he is required to travel and attend as a witness, upon order of the court based upon a finding that the person was a necessary witness. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees.

(d) An expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section.

(e) If more than two witnesses are subpoenaed, bound over, or recognized, to prove a single material fact, the expense of the additional witnesses shall be borne by the party issuing or requesting the subpoena. (1965, c. 310, s. 1; 1969, c. 1190, s. 34; 1971, c. 377, s. 27; 1973, c. 503, ss. 21, 22.)

Cross References. — As to items allowed as costs generally, see § 6-1; as to proof of attendance by witness, see § 6-53.

CASE NOTES

The court's power to tax costs is entirely dependent upon statutory authorization. *State v. Johnson*, 282 N.C. 1, 191 S.E.2d 641 (1972).

Subsections (a) and (d) of this section must be considered together. *State v. Johnson*, 282 N.C. 1, 191 S.E.2d 641 (1972).

As to expert witnesses, subsection (d) modifies subsection (a) by permitting the court, in its discretion, to increase their compensation and allowances, but the modification relates only to the amount of an expert witness's fee; it does not abrogate the requirement

that all witnesses must be subpoenaed before they are entitled to compensation. *State v. Johnson*, 282 N.C. 1, 191 S.E.2d 641 (1972).

Where the witnesses did not testify in obedience to a subpoena, the trial court was without authority to allow them expert fees or to tax the losing party with the costs of their attendance. *State v. Johnson*, 282 N.C. 1, 191 S.E.2d 641 (1972); *Couch v. Couch*, 18 N.C. App. 108, 196 S.E.2d 64 (1973).

Stated in *Siedlecki v. Powell*, 36 N.C. App. 690, 245 S.E.2d 417 (1978).

§ 7A-315. Liability of State for witness fees in criminal cases when defendant not liable.

In a criminal action, if no prosecuting witness is designated by the court as liable for the costs, and the defendant is acquitted, or convicted and unable to pay, or a nolle prosequi is entered, or judgment is arrested, or probable cause is not found, or the grand jury fails to return a true bill, the State shall be liable for the witness fees allowed per G.S. 7A-314 and any expenses for blood tests and comparisons incurred per G.S. 8-50.1(a). (1965, c. 310, s. 1; 1979, c. 576, s.

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§ 7A-316. Payment of witness fees in criminal actions.

A witness in a criminal action who is entitled to a witness fee and who proves his attendance prior to assessment of the bill of costs shall be paid by the clerk from State funds and the amount disbursed shall be assessed in the bill of costs. When the State is liable for the fee, a witness who proves his attendance not later than the last day of court in the week in which the trial was completed shall be paid by the clerk from State funds. If more than two witnesses shall be subpoenaed, bound over, or recognized, to prove a single material fact, disbursements to such additional witnesses shall be charged against the party issuing or requesting the subpoena. (1965, c. 310, s. 1; 1971, c. 377, s. 28.)

* * *

§ 14-226. Intimidating or interfering with witnesses.

If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, he shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned in the discretion of the court. (1891, c. 87; Rev., s. 3696; C. S., s. 4380; 1977, c. 711, s. 16.)

* * *

Record and Disposition of Seized, etc., Articles.

§ 15-11.1. Seizure, custody and disposition of articles; exceptions. — (a) If a law-enforcement officer seizes property pursuant to lawful authority, he shall safely keep the property under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial. Upon application by the lawful owner or a person, firm or corporation entitled to possession or upon his own determination, the district attorney may release any property seized pursuant to his lawful authority if he determines that such property is no longer useful or necessary as evidence in a criminal trial and he is presented with satisfactory evidence of ownership. If the district attorney refuses to release such property, the lawful owner or a person, firm or corporation entitled to possession may make application to the court for return of the property. The court, after notice to all parties, including the defendant, and after hearing, may in its discretion order any or all of the property returned to the lawful owner or a person, firm or corporation entitled to possession. The court may enter such order as may be necessary to assure that the evidence will be available for use as evidence at the time of trial, and will otherwise protect the rights of all parties. Notwithstanding any other provision of law, photographs or other identification or analyses made of the property may be introduced at the time of the trial provided that the court determines that the introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.

* * *

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Protection of the Abused, Neglected or Exploited Disabled Adult Act.

§ 108A-99. Short title.

This Article may be cited as the "Protection of the Abused, Neglected, or Exploited Disabled Adult Act." (1973, c. 1378; s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-100. Legislative intent and purpose.

Determined to protect the increasing number of disabled adults in North Carolina who are abused, neglected, or exploited, the General Assembly enacts this Article to provide protective services for such persons. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-101. Definitions.

(a) The word "abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health.

(b) The word "caretaker" shall mean an individual who has the responsibility for the care of the disabled adult as a result of family relationship or who has assumed the responsibility for the care of the disabled adult voluntarily or by contract.

(c) The word "director" shall mean the director of the county department of social services or his representative in the county in which the person resides or is present.

(d) The words "disabled adult" shall mean any person 18 years of age or over or any lawfully emancipated minor who is present in the State of North Carolina and who is physically or mentally incapacitated due to mental retardation, cerebral palsy, epilepsy or autism; organic brain damage caused by advanced age or other physical degeneration in connection therewith; or due to conditions incurred at any age which are the result of accident, organic brain damage, mental or physical illness, or continued consumption or absorption of substances.

(e) A "disabled adult" shall be "in need of protective services" if that person, due to his physical or mental incapacity, is unable to perform or obtain for himself essential services and if that person is without able, responsible, and willing persons to perform or obtain for his essential services.

(f) The words "district court" shall mean the judge of that court.

(g) The word "emergency" refers to a situation where (i) the disabled adult is in substantial danger of death or irreparable harm if protective services are not provided immediately, (ii) the disabled adult is unable to consent to services, (iii) no responsible, able, or willing caretaker is available to consent to emergency services, and (iv) there is insufficient time to utilize procedure provided in G.S. 108A-105.

(h) The words "emergency services" refer to those services necessary to maintain the person's vital functions and without which there is reasonable belief that the person would suffer irreparable harm or death. This may include taking physical custody of the disabled person.

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(i) The words "essential services" shall refer to those social, medical, psychiatric, psychological or legal services necessary to safeguard the disabled adult's rights and resources and to maintain the physical or mental well-being of the individual. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment, and protection from exploitation. The words "essential services" shall not include taking the person into physical custody without his consent except as provided for in G.S. 108A-106 and in Chapter 122 of the General Statutes.

(j) The word "exploitation" means the illegal or improper use of a disabled adult or his resources for another's profit or advantage.

(k) The word "indigent" shall mean indigent as defined in G.S. 7A-450.

(l) The words "lacks the capacity to consent" shall mean lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including but not limited to provisions for health or mental health care, food, clothing, or shelter, because of physical or mental incapacity. This may be reasonably determined by the director or he may seek a physician's or psychologist's assistance in making this determination.

(m) The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving services from his caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, he is a resident of one of the State-owned hospitals for the mentally ill, centers for the mentally retarded or North Carolina Special Care Center he is, in the opinion of the professional staff of that hospital or center, mentally incompetent to give his consent to medical treatment, he has no legal guardian appointed pursuant to Chapter 33, Chapter 35, or guardian as defined in G.S. 122-36(n), and he needs medical treatment.

(n) The words "protective services" shall mean services provided by the State or other government or private organizations or individuals which are necessary to protect the disabled adult from abuse, neglect, or exploitation. They shall consist of evaluation of the need for service and mobilization of essential services on behalf of the disabled adult. (1973, c. 1378, s. 1; 1975, c. 797; 1979, c. 1044, ss. 1-4; 1981, c. 275, s. 1.)

§ 108A-102. Duty to report; content of report; immunity.

(a) Any person having reasonable cause to believe that a disabled adult is in need of protective services shall report such information to the director.

(b) The report may be made orally or in writing. The report shall include the name and address of the disabled adult; the name and address of the disabled adult's caretaker; the age of the disabled adult; the nature and extent of the disabled adult's injury or condition resulting from abuse or neglect; and other pertinent information.

(c) Anyone who makes a report pursuant to this statute, who testifies in any judicial proceeding arising from the report, or who participates in a required evaluation shall be immune from any civil or criminal liability on account of such report or testimony or participation, unless such person acted in bad faith or with a malicious purpose. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s.

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§ 108A-103. Duty of director upon receiving report.

(a) Any director receiving a report that a disabled adult is in need of protective services shall make a prompt and thorough evaluation to determine whether the disabled adult is in need of protective services and what services are needed. The evaluation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. After completing the evaluation the director shall make a written report of the case indicating whether he believes protective services are needed and shall notify the individual making the report of his determination as to whether the disabled adult needs protective services.

(b) The staff and physicians of local health departments, mental health clinics, and other public or private agencies shall cooperate fully with the director in the performance of his duties. These duties include immediate accessible evaluations and in-home evaluations where the director deems this necessary.

(c) The director may contract with an agency or private physician for the purpose of providing immediate accessible medical evaluations in the location that the director deems most appropriate. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-104. Provision of protective services with the consent of the person; withdrawal of consent; caretaker refusal.

(a) If the director determines that a disabled adult is in need of protective services, he shall immediately provide or arrange for the provision of protective services, provided that the disabled adult consents.

(b) When a caretaker of a disabled adult who consents to the receipt of protective services refuses to allow the provision of such services to the disabled adult, the director may petition the district court for an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services. If the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and consents to the receipt of protective services and that the caretaker refuses to allow the provision of such services, he may issue an order enjoining the caretaker from interfering with the provision of protective services to the disabled adult.

(c) If a disabled adult does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-105. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.

(a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the

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hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17. If the person is indigent, the cost of representation shall be borne by the State.

(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35, Article 1A, or G.S. 33-7, as appropriate; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35, Article 1A, or G.S. 33-7, as appropriate. No disabled adult may be committed to a mental health facility under this Article.

(d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter. (1973, c. 1378, s. 1; 1975, c. 797; 1977, c. 725, s. 3, 1979, c. 1044, s. 5; 1981, c. 275, s. 1.)

§ 108A-106. Emergency intervention; findings by court; limitations; contents of petition; notice of petition; court authorized entry of premises; immunity of petitioner.

(a) Upon petition by the director, a court may order the provision of emergency services to a disabled adult after finding that there is reasonable cause to believe that:

- (1) A disabled adult lacks capacity to consent and that he is in need of protective service;
- (2) An emergency exists; and
- (3) No other person authorized by law or order to give consent for the person is available and willing to arrange for emergency services.

(b) The court shall order only such emergency services as are necessary to remove the conditions creating the emergency. In the event that such services will be needed for more than 14 days, the director shall petition the court in accordance with G.S. 108A-105.

(c) The petition for emergency services shall set forth the name, address, and authority of the petitioner; the name, age and residence of the disabled adult; the nature of the emergency; the nature of the disability if determinable; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (a) above; and facts showing petitioner's attempts to obtain the disabled adult's consent to the services.

(d) Notice of the filing of such petition, and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, shall be given to the person, to his spouse, or if none, to his adult children or next of kin, to his guardian, if any. Such notice shall be given at least 24 hours prior to the hearing of the

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petition for emergency intervention; provided, however, that the court may issue immediate emergency order ex parte upon finding as fact (i) that the conditions specified in G.S. 108A-106(a) exist; (ii) that there is likelihood that the disabled adult may suffer irreparable injury or death if such order be delayed; and (iii) that reasonable attempts have been made to locate interested parties and secure from them such services or their consent to petitioner's provision of such service; and such order shall contain a show-cause notice to each person upon whom served directing such person to appear immediately or at any time within 20 days thereafter and show cause, if any exist, for the dissolution or modification of the said order, otherwise same to remain in effect; and copies of the said order together with such other appropriate notices as the court may direct shall be issued and served upon all of the interested parties designated in the first sentence of this subsection.

(e) Where it is necessary to enter a premises without the disabled adult's consent after obtaining a court order in compliance with subsection (a) above, the representative of the petitioner shall do so.

(f) (1) Upon petition by the director, a court may order that:

a. The disabled adult's financial records be made available at a certain day and time for inspection by the director or his designated agent; and

b. The disabled adult's financial assets be frozen and not withdrawn, spent or transferred without prior order of the court.

(2) Such an order shall not issue unless the court first finds that there is reasonable cause to believe that:

a. A disabled adult lacks the capacity to consent and that he is in need of protective services;

b. The disabled adult is being financially exploited by his caretaker; and

c. No other person is able or willing to arrange for protective services.

(3) Provided, before any such inspection is done, the caretaker and every financial institution involved shall be given notice and a reasonable opportunity to appear and show good cause why this inspection should not be done. And, provided further, that any order freezing assets shall expire ten days after such inspection is completed, unless the court for good cause shown, extends it.

(g) No petitioner shall be held liable in any action brought by the disabled adult if the petitioner acted in good faith. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-107. Motion in the cause.

Notwithstanding any finding by the court of lack of capacity of the disabled adult to consent, the disabled adult or the individual or organization designated to be responsible for the disabled adult shall have the right to bring a motion in the cause for review of any order issued pursuant to this Article. (1973, c. 1378, s. 1; 1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-108. Payment for essential services.

At the time the director, in accordance with the provisions of G.S. 108A-103 makes an evaluation of the case reported, then it shall be determined, according to regulations set by the Social Services Commission, whether the individual is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such essential services, they shall be provided at no cost to the recipient of the services. (1975, c. 797; 1981, c. 275, s. 1.)

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§ 108A-109. Reporting abuse.

Upon finding evidence indicating that a person has abused, neglected, or exploited a disabled adult, the director shall notify the district attorney. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-110. Funding of protective services.

Any funds appropriated by counties for home health care, boarding home, nursing home, emergency assistance, medical or psychiatric evaluations, and other protective services and for the development and improvement of a system of protective services, including additional staff, may be matched by State and federal funds. Such funds shall be utilized by the county department of social services for the benefit of disabled adults in need of protective services. (1975, c. 797; 1981, c. 275, s. 1.)

§ 108A-111. Adoption of standards.

The Department and the administrative office of the court shall adopt standards and other procedures and guidelines with forms to insure the effective implementation of the provisions of this Article. (1975, c. 797; 1981, c. 275, s. 1.)

Part 3A. Assistance Program for Victims of Rape and Sex Offenses.

§ 143B-480.1. Assistance Program for Victims of Rape and Sex Offenses.

There is established an Assistance Program for Victims of Rape and Sex Offenses, hereinafter referred to as the "Program." The Secretary shall administer and implement the Program and shall have authority over all assistance awarded through the Program. The Secretary shall promulgate rules and guidelines for the Program. (1981, c. 931, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 16.)

§ 143B-480.2. Victim assistance.

(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services, not to exceed five hundred dollars (\$500.00) incurred by the victim for the medical

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examination, medical procedures to collect evidence, or counseling treatment which follow the attack, or ambulance services from the place of the attack to a place where medical treatment is provided.

(b) Assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms.

(c) Assistance shall not be awarded unless the rape, attempted rape, sexual offense, or attempted sexual offense was reported to a law-enforcement officer within 72 hours after its occurrence or the Secretary finds there was good cause for the failure to report within that time.

(d) Upon an adverse determination by the Secretary on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

§ 143B-480.3. Reduction of benefits; restitution; actions.

(a) Assistance shall be reduced or denied to the extent the medical expenses are recouped through a public or private insurance plan or other victim benefit source.

(b) The Program shall be an eligible recipient for restitution or reparation under G.S. 15A-1021, 15A-1343, 148-33.1, 148-33.2, 148-57.1, and any other applicable statutes.

(c) When any victim who:

(1) Has received assistance under this Part;

(2) Brings an action for damages arising out of the rape, attempted rape, sexual offense, or attempted sexual offense for which she received that assistance; and

(3) Recovers damages including the expenses for which she was awarded assistance,

the court shall make as part of its judgment an order for reimbursement to the Program of the amount of any assistance awarded less reasonable expenses allocated by the court to that recovery. (1981, c. 931, s. 2.)

(d) Funds appropriated to the Department of Crime Control and Public Safety for this program may be used to purchase and distribute rape evidence collection kits approved by the State Bureau of Investigation. (1981, c. 931, s. 2; 1983, c. 715, s. 3.)

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Chapter 50B.

Domestic Violence.

Sec.	Sec.
50B-1. Domestic violence; definition.	50B-5. Emergency assistance.
50B-2. Institution of civil action; motion for emergency relief; temporary orders.	50B-6. Construction of Chapter.
50B-3. Relief.	50B-7. Remedies not exclusive.
50B-4. Enforcement of orders.	50B-8. Effect upon prosecution for violation of § 14-184 or other offense against public morals.

§ 50B-1. Domestic violence; definition.

Domestic violence means the occurrence of one or more of the following acts between past or present spouses or between persons of the opposite sex who are living together or have lived together as if married:

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing another person in fear of imminent serious bodily injury by the threat of force. (1979, c. 561, s. 1.)

Editor's Note. — Session Laws 1979, c. 561, s. 8, provides: "This act shall become effective October 1, 1979, and shall apply to all occurrences involving the acts enumerated

above occurring on or after that date."

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

CASE NOTES

Applicability of Chapter. — This Chapter did not become effective until October 1, 1979, and applies only to acts of domestic violence

occurring on or after that date. *Story v. Story*, 57 N.C. App. 509, 291 S.E.2d 923 (1982).

§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders.

(a) A party residing in this State may seek relief under this Chapter by filing a civil action alleging acts of domestic violence. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter.

(b) A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself. A hearing shall be held within 10 days of the filing of the motion.

(c) Prior to the hearing and upon a finding of good cause, the court shall enter such temporary orders as it deems necessary to protect the victim or minor children from acts of domestic violence. Immediate and present danger of such acts against the victim or minor children shall constitute good cause.

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§ 50B-3. Relief.

(a) The court may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a spouse possession of the residence or household of the parties and exclude the other spouse from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from harassing or interfering with the other; and
- (10) Award costs and attorney's fees to either party.

(b) Protective orders entered or consent orders approved pursuant to this Chapter shall be for a fixed period of time not to exceed one year.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city, or resides in a city with no police department, the copy shall be issued to and retained by the sheriff of the county in which the victim resides. (1979, c. 561, s. 1.)

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

CASE NOTES

Stated in *Story v. Story*, 57 N.C. App. 509, 291 S.E.2d 923 (1982).

§ 50B-4. Enforcement of orders.

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter.

(b) A law enforcement officer shall arrest and take a person into custody if the officer has probable cause to believe that the person has violated a court order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from harassing or interfering with the victim, and if the victim presents the law enforcement officer with a copy of the order or the officer determines that such an order exists through phone, radio or other communication with appropriate

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authorities. The person arrested shall be brought before the appropriate district court judge at the earliest time possible to show cause why he or she should not be held in civil contempt for violation of the order. The person arrested shall be entitled to be released under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes. (1979, c. 561, s. 1.)

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

§ 50B-5. Emergency assistance.

(a) A person who alleges that he or she has been the victim of domestic violence may request the assistance of a local law enforcement agency. The local law enforcement agency shall respond to the request for assistance as soon as practicable; provided, however, a local law enforcement agency shall not be required to respond in instances of multiple complaints from the same complainant if the multiple complaints are made within a 48-hour period and the local law enforcement agency has reasonable cause to believe that immediate assistance is not needed. The local law enforcement officer responding to the request for assistance is authorized to take whatever steps are reasonably necessary to protect the complainant from harm and is authorized to advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where feasible, the law enforcement officer is authorized to transport the complainant to appropriate facilities such as hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings.

(b) In providing the assistance authorized by subsection (a), no officer may be held criminally or civilly liable on account of reasonable measures taken under authority of subsection (a). (1979, c. 561, s. 1.)

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

§ 50B-6. Construction of Chapter.

This Chapter shall not be construed as granting a status to any person for any purpose other than those expressly stated herein. (1979, c. 561, s. 1.)

§ 50B-7. Remedies not exclusive.

The remedies provided by this Chapter are not exclusive but are additional to remedies provided under Chapter 50 and elsewhere in the General Statutes. (1979, c. 561, s. 1.)

§ 50B-8. Effect upon prosecution for violation of § 14-184 or other offense against public morals.

The granting of a protective order, approval of a consent agreement, prosecution for violation of this Chapter, or the granting of any other relief or the institution of any other enforcement proceedings under this Chapter shall not be construed to afford a defense to any person or persons charged with

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fornication and adultery under G.S. 14-184 or charged with any other offense against the public morals; and prosecution, conviction, or prosecution and conviction for violation of any provision of this Chapter shall not be a bar to prosecution for violation of G.S. 14-184 or of any other statute defining an offense or offenses against the public morals. (1979, c. 561, s. 1.)

Category	Citation
1. Victim Compensation Program	65-13-01 et seq.
1.1 Responsible Agency	65-13-03(1)
1.2 Eligible Claimants	65-13-03(g), 65-13-04.1, 65-13-06(3)
1.3 Losses Covered	65-13-03(6), 65-13-04
1.4 Minimum and Maximum Award	65-13-06(7),(8),(9)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	65-13-06(4)
1.7 Filing of Claim - Time Limit	65-13-06(2)
1.8 Emergency Award	65-13-16
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	12.1-32-02(e),(f); 12.1-32-07(2)(e), 12.1-32-08
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	12.1-32-08
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	31-01-16 et seq.
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	12.1-09-01
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	65-13-05(9)
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	29-01-20 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	14-07.1-01 et seq.
14.2 Domestic Violence Shelters	14-07.2-01 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	65-13-05(5)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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65-12-12. Disposition of funds. All funds collected and received under this chapter shall be paid to the state treasurer and deposited to the credit of the workmen's compensation bureau fund. Any fee not paid within thirty days from the date of billing shall be in default and may be collected in a civil action against said defaulting party in the name of the state.

Source: N.D.C.C.; S.L. 1975, ch. 586, § 5.

CHAPTER 65-13

UNIFORM CRIME VICTIMS REPARATIONS ACT

Section	
65-13-01.	Short title.
65-13-02.	Legislative purpose and intent.
65-13-03.	Definitions.
65-13-04.	Award of reparations.
65-13-04.1.	No award paid to inmates.
65-13-05.	Powers and duties of the board.
65-13-06.	Application for reparations — Awards — Limitations on awards.
65-13-07.	Repealed.
65-13-08.	Informal hearing — Rehearing.
65-13-09.	Repealed.
65-13-10.	Evidence of physical condition.
65-13-11.	Enforcement of board's orders.
65-13-12.	Award and payment of reparations.
65-13-13.	Attorney's fees.
65-13-14.	Subrogation — Actions — Allocation of expenses.
65-13-15.	Manner of payment — Nonassignability and exemptions.
65-13-16.	Tentative awards.
65-13-17.	Reconsideration and review of board decisions.
65-13-18.	Reports.
65-13-19.	Uniformity of application and construction.
65-13-20.	Penalty.

65-13-01. Short title. This chapter shall be known as the Uniform Crime Victims Reparations Act.

Source: S.L. 1975, ch. 587, § 1.

Comparative Legislation.

Law Reviews.

Crime Victim Compensation in North Dakota: A Year of Trial and Error, Richard J. Gross, 53 N.D.L.Rev. 7.

Jurisdictions which have enacted the Uniform Crime Victims Reparations Act include:
Mont. Code Ann. §§ 53-9-101 to 53-9-133.
Ohio Rev. Code Ann. §§ 2743.51 to 2743.72.

65-13-02. Legislative purpose and intent. It is the intent of the legislative assembly of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislative assembly's intention to provide compensation in the amount of expenses actually suffered as a direct result of the criminal acts of other persons.

Source: S.L. 1975, ch. 587, § 2.

65-13-03. Definitions. As used in this chapter the words and phrases in this section have the meanings indicated:

1. "Board" means the workmen's compensation bureau.
2. "Claimant" means any of the following claiming reparations under this chapter: a victim, a dependent of a deceased victim, or a representative of either.

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3. "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. However, welfare benefits will not be deemed a collateral source unless claimant was receiving such benefits prior to the injury.
4. "Criminally injurious conduct" means conduct that includes all of the following:
 - a. Occurs in this state.
 - b. Results in bodily injury or death.
 - c. Is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct was a minor or 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" 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" 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. Economic detriment caused by pain and suffering or physical impairment is also economic loss.
 - a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, 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 five hundred dollars 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 semiprivate 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 appropriate 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 the 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.

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- f. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.
- g. "Victim" means a person who suffers bodily injury or death as a result of (1) criminally injurious conduct, (2) the good faith effort of any person to prevent criminally injurious conduct, or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

- 7. "Bodily injury" means any harm which requires medical treatment and results in economic loss and includes pregnancy and nervous shock.

Source: S.L. 1975, ch. 587, § 3; 1977, ch. 580, § 2.

"Work Loss".

"Work loss", as used in subdivision 6b, includes loss of income due to injury at the hands of a criminal assailant, but not loss due to the necessity of the victim's appearance in court as a witness against his assailant. Hughes v. North Dakota Crime Victims Reparations Board (1976) 246 NW 2d 774.

65-13-04. Award of reparations. The board shall award reparations for economic loss arising directly from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met.

Source: S.L. 1975, ch. 587, § 4; 1977, ch. 580, § 3.

Wages Lost Through Attendance in Court.

Wages lost by crime victim for the days he was required to be in court to testify against

his assailant were not compensable under the terms of this section. Hughes v. North Dakota Crime Victims Reparations Board (1976) 246 NW 2d 774.

65-13-04.1. No award paid to inmates. No award of any kind shall be made under this chapter to a victim convicted of a crime and injured while confined in any state, county, or city jail, prison, or other correctional facility.

Source: S.L. 1977, ch. 580, § 1; 1981, ch. 646, § 1.

65-13-05. Powers and duties of the board. In addition to the powers and duties specified elsewhere in this chapter, the board has the following powers and duties:

1. 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. The duty to adopt rules to implement this chapter.
3. The duty to prescribe forms for applications for reparations.
4. The duty to hear and determine all matters relating to claims for reparations, and the power to reinvestigate or reopen claims without regard to statutes of limitations or periods of prescription.
5. The power to request from prosecuting 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.
6. The power to subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence.
7. The power to take notice of judicially cognizable facts and general, technical, and scientific facts within their specialized knowledge.
8. 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.

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

Source: S.L. 1975, ch. 587, § 5; 1977, ch. 580, § 4.

65-13-06. Application for reparations — Awards — Limitations on awards.

1. An applicant for an award of reparations shall apply in writing in a form that conforms substantially to that prescribed by the board.
2. 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. 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. Reparations may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two hours after its occurrence or the board finds there was good cause for the failure to report within that time.
5. 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. 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 which he claims.
7. Reparations may not be awarded if the economic loss prior to deduction of collateral sources is less than one hundred dollars.
8. Reparations for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed two hundred dollars per week.
9. 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 twenty-five thousand dollars in the aggregate.

Source: S.L. 1975, ch. 587, § 6; 1977, ch. 580, § 5.

65-13-07. Notice to attorney general — Function of attorney general. Repealed by S.L. 1977, ch. 580, § 9.

65-13-08. Informal hearing — Rehearing. After an informal hearing on the papers submitted, at which the claimant need not be present, the board may accept, deny, or reduce a claim or set it for rehearing. If a claim is reduced or denied by the board, the claimant may request a rehearing or appeal the decision. The claimant must be notified of such right to rehearing or appeal. Rehearings and appeals will be governed by chapter 28-32.

Source: S.L. 1975, ch. 587, § 8; 1977, ch. 580, § 6.

65-13-09. Contested cases — Notice — Hearing — Records. Repealed by S.L. 1977, ch. 580, § 9.

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65-13-10. Evidence of physical condition.

1. 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. 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 results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.
3. 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. 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.

Source: S.L. 1975, ch. 587, § 10.

65-13-11. 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 district 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.

Source: S.L. 1975, ch. 587, § 11.

65-13-12. Award and payment of reparations.

1. 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. 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 65-13-16.

Source: S.L. 1975, ch. 587, § 12.

65-13-13. 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

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are awarded. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed.

Source: S.L. 1975, ch. 587, § 13.

65-13-14. Subrogation — Actions — Allocation of expenses.

1. 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. 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:
 - a. Join in the action as a party plaintiff to recover reparations awarded;
 - b. Require the claimant to bring the action in his individual name, as a trustee in behalf of the state, to recover reparations awarded; or
 - c. 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. 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 noneconomic detriment, punitive damages, and economic loss.

Source: S.L. 1975, ch. 587, § 14.

65-13-15. Manner of payment — Nonassignability and exemptions.

1. 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. 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 one thousand dollars.
3. 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. 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 costs of which are included in the award.
5. An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable, except:

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- a. An assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or
 - b. 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.
6. No funds shall be placed in reserve by the board on any claim.

Source: S.L. 1975, ch. 587, § 15; 1981, ch. 84, § 1.

65-13-16. 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.

Source: S.L. 1975, ch. 587, § 16.

65-13-17. Reconsideration and review of board decisions.

1. 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. The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.
3. A final decision of the board is subject to judicial review on appeal by the claimant to the district court.

Source: S.L. 1975, ch. 587, § 17; 1977, ch. 580, § 7.

65-13-18. Reports. The board shall prepare and transmit biennially to the governor and the legislative assembly a report of its activities, including a brief description of the facts, the amount of reparations awarded in each case, and a statistical summary of claims and awards made and denied.

Source: S.L. 1975, ch. 587, § 18; 1977, ch. 580, § 8.

65-13-19. 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.

Source: S.L. 1975, ch. 587, § 19.

Note.

Section 20 of chapter 587, S.L. 1975 provided: "If any provision of this Act or the application thereof to any person is held

invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable".

65-13-20. Penalty. Any claimant who knowingly makes a false claim, or a false statement in connection with any claim, is guilty of a class A misdemeanor and upon conviction shall, in addition to serving any punishment as provided by law, forfeit any compensation paid under this chapter.

Source: S.L. 1975, ch. 587, § 21.

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12.1-32-02. Sentencing alternatives — Credit for time in custody — Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:
 - a. Payment of the reasonable costs of his prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility, a regional corrections center, a county jail, or in the state farm in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property, or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

12.1-32-07. Conditions of probation — Revocation. — 1. The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

2. When imposing a sentence to probation, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:

12.1-32-08. Hearing prior to restitution or reparation order—Conditions.—1. Prior to imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. At or following the hearing, the court shall make determinations as to:

- a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages shall be limited to fruits of the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action.
- b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
- c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. Any payments made pursuant to such order shall be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make

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restitution or reparation as a sentence or condition of probation may, if the court so directs, be filed, transcribed, and enforced by the person entitled to the restitution or reparation in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

Source: S. L. 1973, ch. 116, § 31; 1975, 24B C. J. S. Criminal Law, §§ 2004-2007.

Collateral References.

Criminal Law—1220, 1221.

Public relief, probation conditioned on restitution in connection with application for, or receipt of, 92 ALR 2d 458.

* * *

31-01-16. Compensation and mileage and travel expense of witness — County to pay fees except for district court fees in criminal action. A witness in a civil or criminal case is entitled to receive:

1. A sum of fifteen dollars for each day necessarily in attendance before the district or county court or before any other court, board, or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases such witness fees and expenses on the part of the state shall be paid out of the county treasury of the proper county except that district court witness fees and expenses shall be paid by the state. In no event shall prisoners be compensated as witnesses under the provisions of this section.

Source: N.D.C.C.; S.L. 1981, ch. 320, § 77.

31-01-16.2. Compensation of municipal court witnesses. A witness in municipal court shall be entitled to receive the amount of five dollars for each hour necessarily spent in municipal court, but in no instance shall compensation be more than seven dollars and fifty cents for any such appearance.

Source: N.D.C.C.; S.L. 1983, ch. 370, § 1.

31-01-18. Expenses of witness paid by county or state upon court order in criminal action. When a person, as a witness in a criminal action, attends before a magistrate, grand jury, or court, upon a subpoena or in pursuance of an undertaking and it appears that he:

1. Has come from a place outside the county; or
 2. Is poor and unable to pay the expenses of such attendance,
- the court, if the attendance of the witness is upon a trial, by order upon its minutes, or in any other case, the judge, by a written order, may direct the county treasurer in county court cases to pay the witness a reasonable sum to be specified in the order for the necessary expenses of his attendance. Upon the production of the order or a certified copy thereof, the county treasurer must pay the witness the sum specified therein out of the county treasury. Where the order is issued by the district court the witness shall be paid by the state.

Source: N.D.C.C.; S.L. 1981, ch. 320, § 78.

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31-01-19. Witness for indigent defendants subpoenaed and paid by county or state under court order in criminal action. If it appears to the court before which a criminal action is about to be tried that the defendant is unable to pay the witnesses in his behalf, such court shall make an order, to be entered in the minutes, that such witnesses as may be deemed reasonable, naming them, be subpoenaed to attend at such trial at the expense of the county or the state, whichever is liable to pay the costs of the prosecution of such action, and such witnesses shall be paid accordingly.

Source: N.D.C.C.; S.L. 1981, ch. 320, § 79.

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CHAPTER 12.1-09

TAMPERING AND UNLAWFUL INFLUENCE

Section		Section	
12.1-09-01	Tampering with witnesses and informants in proceedings.	12.1-09-04	Harassment of and communication with jurors.
12.1-09-02	Tampering with informants in criminal investigations.	12.1-09-05	Eavesdropping on jury deliberations.
12.1-09-03	Tampering with physical evidence.	12.1-09-06	Nondisclosure of retainer in criminal matter.

12.1-09-01. Tampering with witnesses and informants in proceedings.—

1. A person is guilty of a class C felony if he uses force, threat, deception, or bribery:

- a. With intent to influence another's testimony in an official proceeding; or
- b. With intent to induce or otherwise cause another:
 - (1) To withhold any testimony, information, document, or thing from an official proceeding, whether or not the other person would be legally privileged to do so;
 - (2) To violate section 12.1-09-03;
 - (3) To elude legal process summoning him to testify in an official proceeding; or
 - (4) To absent himself from an official proceeding to which he has been summoned.

2. A person is guilty of a class C felony if he solicits, accepts, or agrees to accept from another a thing of pecuniary value as consideration for:

- a. Influencing the actor's testimony in an official proceeding; or
- b. The actor's engaging in the conduct described in paragraphs (1) through (4) of subdivision b of subsection 1.

3. a. It is a defense to a prosecution under this section for use of threat with intent to influence another's testimony that the

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threat was not of unlawful harm and was used solely to influence the other to testify truthfully.

b. In a prosecution under this section based on bribery, it shall be an affirmative defense that any consideration for a person's refraining from instigating or pressing the prosecution of an offense was to be limited to restitution or indemnification for harm caused by the offense.

c. It is no defense to a prosecution under this section that an official proceeding was not pending or about to be instituted.

4. This section shall not be construed to prohibit the payment or receipt of witness fees provided by statute, or the payment, by the party upon whose behalf a witness is called, and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time spent in attendance at an official proceeding, or in the case of expert witnesses, a reasonable fee for preparing and presenting an expert opinion.

Source: S. L. 1973, ch. 116, § 9.

58 Am. Jur. 2d, Obstructing Justice, § 8.

Collateral References.

Obstructing Justice—4.

67 C. J. S. Obstructing Justice, § 8.

12.1-09-02. Tampering with informants in criminal investigations.—A person is guilty of a class C felony if, believing another may have information relating to an offense, he deceives such other person or employs force, threat, or bribery with intent to hinder, delay, or prevent communication of such information to a law enforcement officer. The affirmative defense in subdivision b of subsection 3 of section 12.1-09-01 applies to this section.

Source: S. L. 1973, ch. 116, § 9.

* * *

29-01-20. Stolen property to be held by peace officer.—When property alleged to have been stolen or embezzled comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by section 29-01-21 to direct the disposal thereof.

Source: C. Crim. P. 1877, § 538; R. C. 1905, § 10233; C. L. 1913, § 11089; R. C. 1895, § 8424; R. C. 1899, § 8424; R. C. 1943, § 29-0120.

29-01-21. Magistrate to give order for delivery.—On satisfactory proof of the title of the owner of the property, the magistrate before whom the complaint is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

Source: C. Crim. P. 1877, § 539; R. C. 1905, § 10234; C. L. 1913, § 11090; R. C. 1895, § 8425; R. C. 1899, § 8425; R. C. 1943, § 29-0121.

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29-01-22. Delivery of stolen property by magistrate.—If property stolen or embezzled comes into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Source: C. Crim. P. 1877, § 540; R. C. 1905, § 10235; C. L. 1913, § 11091; R. C. 1895, § 8426; R. C. 1899, § 8426; R. C. 1943, § 29-0122.

29-01-23. Court may order delivery of stolen property.—If property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, on proof of his title, may order it to be restored to the owner.

Source: C. Crim. P. 1877, § 541; R. C. 1905, § 10236; C. L. 1913, § 11092; R. C. 1895, § 8427; R. C. 1899, § 8427; R. C. 1943, § 29-0123.

29-01-24. Unclaimed stolen property—Delivery to county treasurer.—If the property stolen or embezzled is not claimed by the owner within six months from the conviction of a person for stealing or embezzling it, the magistrate or officer having it in custody, on the payment of the necessary expenses incurred in its preservation, must deliver it to the county treasurer by whom, if it is money, it must be paid into the county treasury, or if it is not money, it must be sold and the proceeds paid into such treasury.

Source: C. Crim. P. 1877, § 542; R. C. 1905, § 10237; C. L. 1913, § 11093; R. C. 1895, § 8428; R. C. 1899, § 8428; R. C. 1943, § 29-0124.

29-01-25. Receipt to accused and clerk or magistrate.—When money or other property is taken from a defendant arrested upon a charge of a public offense, the officer taking it at the time must give duplicate receipts therefor, specifying particularly the amount of the money, or the kind of property taken, one of which receipts he must deliver to the defendant, and the other of which he must file at once with the clerk of the court to which the complaint and other papers in the case by law are required to be sent. When such property is taken by a police officer of any incorporated city, he must deliver one of the receipts to the defendant and one, with the property, at once to the clerk or other person in charge of the police office in such city, or, if there is no such clerk or other person, then to the magistrate before whom such defendant may be taken for examination or trial.

Source: C. Crim. P. 1877, § 543; R. C. 1905, § 10238; C. L. 1913, § 11094; R. C. 1895, § 8429; R. C. 1899, § 8429; R. C. 1943, § 29-0125.

29-01-26. Duty of clerk or magistrate.—The clerk, magistrate, or other person to whom property is delivered, as is provided in section 29-01-25, must enter in a suitable book every amount of money and a description of every article of property taken from each person so arrested and must attach a number to every amount of money and every article of property and make a corresponding entry thereof, but when the receipt and property, as provided in section 29-01-25, are delivered to a magistrate, it shall be sufficient compliance with the provisions of this section if the entries are made in his docket.

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14-07.1-01. "Adult abuse" defined. For purposes of this chapter, "adult abuse" includes physical harm, bodily injury, or assault on the complaining adult, or the imminent threat thereof.

Source: S.L. 1979, ch. 193, § 1.

14-07.1-02. Adult abuse — Protection order.

1. An action for a protection order commenced by a verified application alleging the existence of adult abuse may be brought by any spouse or family member or former spouse in the district court, regardless of whether or not a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
3. Service shall be made upon the respondent not less than five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent adult abuse, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, or injuring any other party or minor children of the parties.
 - b. Excluding either party from the dwelling they share, from the residence of the other, or from an adult abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with an adult abuse program or other agency which provides professional services which the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports shall be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys fees and costs.
5. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
6. No order or agreement under this section shall affect title to any real property in any matter.

Source: S.L. 1979, ch. 193, § 2; 1981, ch. 167, § 1.

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14-07.1-03. Temporary protection order — Copy to law enforcement agency.

1. Where an application under section 14-07.1-02 alleges an immediate and present danger of abuse to the applicant, based upon an allegation of a recent incident of actual abuse or threat of abuse, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
2. An ex parte temporary protection order may include:
 - a. Restraining any party from committing acts of abuse on the other.
 - b. Excluding any party from the dwelling they share, from the residence of the other, or from an adult abuse shelter care facility.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
3. An ex parte temporary protection order shall remain in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court.
4. A full hearing as provided by section 14-07.1-02 shall be set for not later than fourteen days from the issuance of the temporary order. The respondent shall be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.
5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual abuse which is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.
6. If the filing fee for filing the application has been waived by order of the court, the court may waive the fee for service of process by the sheriff or other appropriate law enforcement agency or may order the respondent to pay these costs.

Source: S.L. 1979, ch. 193, § 3; 1981, ch. 167, § 2.

14-07.1-04. Assistance of peace officer in service or execution. When an order is issued upon request of the applicant under section 14-07.1-02 or 14-07.1-03, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to an adult abuse shelter care facility.

Source: S.L. 1979, ch. 193, § 4.

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14-07.1-05. Right to apply for relief. A person's right to apply for relief under section 14-07.1-02 or 14-07.1-03 shall not be affected by his or her leaving the residence or dwelling to avoid abuse. The court shall not require security or bond from any party unless it deems it necessary in exceptional cases.

Source: S.L. 1979, ch. 193, § 5.

14-07.1-06. Penalty for violation of a protection order — Arrest without warrant. Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order shall be a class A misdemeanor and also constitute criminal contempt of court subject to penalties therefor. A peace officer may arrest any person without a warrant if:

1. The person has committed the offense of violating a protection order, whether or not the violation was committed in the presence of the officer; or
2. The person, if the peace officer has probable cause to believe the person within the preceding four hours, has assaulted his or her spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

No peace officer shall be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

Source: N.D.C.C.; S.L. 1983, ch. 177, § 1.

14-07.1-07. Nonexclusive remedy. Any proceeding under this chapter shall be in addition to any other civil or criminal remedies.

Source: S.L. 1979, ch. 193, § 7.

14-07.1-08. Emergency relief. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from abuse. Immediate and present danger of abuse to the applicant or others shall constitute good cause for purposes of this section. Any order issued under this section shall expire seventy-two hours after its issuance, unless continued by the district court, or the issuing court in the event of continuing unavailability of the district court. At that time, the applicant may seek a temporary order from the district court. Any order issued under this section and any documentation in support thereof shall be immediately certified to the district court. Such certification to the district court shall have the effect of commencing proceedings under section 14-07.1-02 and invoking the other provisions of this chapter.

Source: S.L. 1979, ch. 193, § 8.

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CHAPTER 14-07.2

DOMESTIC VIOLENCE VICTIM ASSISTANCE

Section	
14-07.2-01.	Purpose.
14-07.2-02.	Definitions.
14-07.2-03.	Domestic violence prevention fund established.
14-07.2-04.	Grants — Eligibility — Conditions — Limitation.
14-07.2-05.	Duties of health officer.

14-07.2-01. Purpose. The legislative assembly finds that domestic violence is a serious and complex problem which affects families from all social and economic backgrounds. It is the purpose of this chapter to provide grants to private nonprofit organizations for spouse abuse programs designed to assist victims of domestic violence and their dependents.

Source: S.L. 1981, ch. 168, § 1.

14-07.2-02. Definitions. For the purposes of this chapter:

1. "Department" means the state department of health.
2. "Domestic violence" means any act or threatened act which results or threatens to result in bodily injury, and which is committed by a person against another person to whom such person is married or has been married, or with whom such person is residing or has resided lawfully.
3. "Health officer" means the state health officer of the department.
4. "Spouse abuse program" means a program which provides emergency housing for victims of domestic violence and their dependents, plus some or all of the following additional services:
 - a. Counseling.
 - b. Advocacy.
 - c. Community education on domestic violence.
 - d. Support groups.
 - e. Twenty-four-hour crisis lines.
 - f. Referral to other sources for services not provided by the spouse abuse program.

Source: S.L. 1981, ch. 168, § 2.

14-07.2-03. Domestic violence prevention fund established. There is hereby established a special fund in the state treasury, to be known as the domestic violence prevention fund. The moneys accumulated in such fund shall be allocated to the department for distribution as provided by this chapter and within the limits of legislative appropriation. The fund shall not be subject to the provisions of section 54-44.1-11.

Source: S.L. 1981, ch. 168, § 3.

14-07.2-04. Grants — Eligibility — Conditions — Limitation. Moneys in the domestic violence prevention fund shall be administered by the department for grants to private nonprofit organizations which are engaged in providing emergency housing for victims of domestic violence and their

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dependents. An eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind.

Grants shall be renewable within the limits of legislative appropriation, provided the applicant continues to meet the eligibility criteria established by this chapter and rules adopted by the department pursuant to this chapter and chapter 28-32. Grant application deadlines may be included in any rules adopted pursuant to this section. No initial grant shall exceed the amount of ten thousand dollars per biennium; provided, that any appropriated funds remaining unobligated after the first year of the biennium may be disbursed by the department as supplemental grants.

Source: S.L. 1981, ch. 168, § 4.

14-07.2-05. Duties of health officer. The health officer shall:

1. Respond to all applicants within sixty days after the deadline for receipt of applications, whether or not the applicant is eligible for funds.
2. Ensure that no more than ten percent of the moneys allocated to the domestic violence prevention fund in any biennium is expended for departmental administration of the grant program.
3. Distribute grants to eligible applicants in accordance with the purposes of this chapter.

Source: S.L. 1981, ch. 168, § 5.

Category	Citation
1. Victim Compensation Program	2743.51 et seq.
1.1 Responsible Agency	2743.52
1.2 Eligible Claimants	2743.51(L)
1.3 Losses Covered	2743.51(E),(F)
1.4 Minimum and Maximum Award	2743.60(I)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	2743.60(A)
1.7 Filing of Claim - Time Limit	2743.60(A)
1.8 Emergency Award	2743.67
1.9 Funding	2743.70; 2743.191
2. Restitution	
2.1 Sentencing Option	2951.02(B)(9),(C)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	2335.05; 2335.08
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	2921.03
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	2743.71; 2929.14(D); 2929.22(G)
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	2929.12(A); 2929.14(A); 2947.051
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	737.29 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	2929.12(B)(2); 2929.21(E); 2929.22(B)(2); 2951.02(D)(4)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	2907.28 et seq.
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	2919.25 et seq.; 2935.03(B) (arrest without warrant for domestic violence); 2933.16 (treatment as condition of probation)
14.1 Protective Orders	3113.31 et seq.
14.2 Domestic Violence Shelters	3113.33 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	3113.39 (domestic violence)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	2743.53(B)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	See, 2921.22(B)(6) (exemption from crime reporting)

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Ohio Revised Code Annotated (Page)

Necessity and sufficiency of showing of medical witness' familiarity with particular medical or surgical technique involved in suit. 46 ALR3d 275.

Necessity of expert evidence to support an action for malpractice against a physician or surgeon. 81 ALR2d 397.

Necessity of expert evidence to support action against hospital for injury to or death of patient. 40 ALR3d 515.

CASE NOTES AND OAG

1. (1981) The phrase "active clinical practice," contained in RC § 2743.43(A), primarily describes those physicians who spend three-fourths of their professional time treating patients, but also includes the physician-specialist whose work is so related or adjunctive to patient care as to be necessarily included in that definition for the purpose of determining fault or liability in a medical claim: *McCrory v. State*, 67 OS2d 99, 21 OO3d 63, 423 NE2d 156.

2. (1979) A part-time physician for the veterans' administration is not disqualified to testify as an expert witness in a malpractice action: *Levin v. Hardwig*, 60 OS2d 51, 14 OO3d 304, 397 NE2d 762.

3. (1979) Revised Code § 2743.43 does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution: *Denicola v. Providence Hospital*, 57 OS2d 115, 11 OO3d 290, 387 NE2d 231.

4. (1979) Revised Code § 2743.43, effective July 28, 1975, is a law of a remedial nature providing a rule of procedure, and, therefore, it is applicable to a trial conducted after its effective date, even though the cause of action accrued and the complaint was filed before that date: *Denicola v. Providence Hospital*, 57 OS2d 115, 11 OO3d 290, 387 NE2d 231.

5. (1978) Where the fields of medicine overlap, a witness from a school or specialty other than that of the defendant physician may qualify as an expert witness if he demonstrates sufficient knowledge of the standards of the defendant's school and specialty enabling him to give an expert opinion as to the conformity of the defendant's conduct to those particular standards: *Ishler v. Miller*, 56 OS2d 447, 10 OO3d 543, 384 NE2d 296.

6. (1978) In a malpractice action against an orthopedic surgeon, it is reversible error to exclude the expert testimony of a podiatrist concerning the application of and failure to remove a cast which was too tight, where there is a minimum standard of care common to the application and removal of a cast, and it is shown that the podiatrist by his education and clinical experience has the requisite familiarity and knowledge concerning these procedures: *Alexander v. Mt. Carmel Medical Center*, 56 OS2d 155, 10 OO3d 332, 383 NE2d 564.

(A) "Claimant" means any of the following persons who claim an award of reparations under sections 2743.51 to 2743.71 of the Revised Code:

(1) A victim WHO WAS ONE OF THE FOLLOWING AT THE TIME OF THE CRIMINALLY INJURIOUS CONDUCT:

(a) A RESIDENT OF THIS STATE;
(b) A RESIDENT OF A STATE, DISTRICT, TERRITORY, OR FOREIGN COUNTRY THE LAWS OF WHICH PERMIT RESIDENTS OF THIS STATE TO RECOVER COMPENSATION AS VICTIMS OF OFFENSES COMMITTED IN THAT STATE, DISTRICT, TERRITORY, OR COUNTRY;

(2) A dependent of a deceased victim WHO IS DESCRIBED IN DIVISION (A)(1) OF THIS SECTION;

(3) A third person, other than a collateral source, WHO LEGALLY ASSUMES OR VOLUNTARILY PAYS THE OBLIGATIONS OF A VICTIM, OR OF A DEPENDENT OF A VICTIM, WHO IS DESCRIBED IN DIVISION (A)(1) OF THIS SECTION, WHICH OBLIGATIONS ARE INCURRED AS A RESULT OF THE CRIMINALLY INJURIOUS CONDUCT THAT IS THE SUBJECT OF THE CLAIM AND MAY INCLUDE, BUT ARE NOT LIMITED TO, MEDICAL OR BURIAL EXPENSES;

(4) A person who is authorized to act on behalf of a victim, a dependent, or a third person who is not a collateral source

ANY PERSON WHO IS DESCRIBED IN DIVISION (A)(1), (2), OR (3) OF THIS SECTION.

(B) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

(1) The offender;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under sections 2743.51 to 2743.72 of the Revised Code;

(3) Social security, medicare, and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance;

(5) Workmen's WORKERS' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim for loss that he sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services, or benefits for disability;

(9) THAT PORTION OF THE PROCEEDS OF ALL CONTRACTS OF INSURANCE PAYABLE TO THE CLAIMANT ON ACCOUNT OF THE DEATH OF THE VICTIM THAT EXCEEDS FIFTY THOUSAND DOLLARS.

(C) "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 the person engaging in the conduct intended to cause personal injury or death OR WHEN THE PERSON ENGAGING IN THE CONDUCT WAS USING THE VEHICLE TO FLEE IMMEDIATELY AFTER COMMITTING A FELONY OR AN ACT THAT WOULD CONSTITUTE A FELONY BUT FOR THE FACT THAT THE PERSON ENGAGING IN THE CONDUCT LACKED THE CAPACITY TO COMMIT THE FELONY UNDER THE LAWS OF THIS STATE.

(D) "Dependent" means an individual wholly or partially dependent upon the victim for care and support, and includes a child of the victim born after his death.

(B) The court of claims commissioners shall sit in Franklin county. A single commissioner or any panel of commissioners, pursuant to rules adopted by the chief justice of the supreme court, may sit and hear claims for an award of reparations at any other location in the state.

(C) Each claim for an award of reparations shall be heard by a single commissioner. The commissioner may determine the claim and make an award administratively without a hearing. If a claimant or the attorney general objects to the determination or award made by a single commissioner and files an objection with the clerk within ten THIRTY days after receipt of JOURNALIZATION of the order of the commissioner, the claim shall be heard by a panel of three commissioners who shall make an award or deny the claim upon a majority vote.

(D) The supreme court may promulgate rules to implement sections 2743.51 to 2743.72 of the Revised Code, which may include rules for the allowance of attorney's fees, the procedure for hearing claims by a single commissioner or by a panel of court of claims commissioners, and the procedure for hearing appeals from decisions of the court of claims commissioners.

Sec. 2743.58. (A) The clerk of the court of claims shall send a copy of the application to the attorney general. UPON RECEIPT OF THE COPY OF THE APPLICATION, THE ATTORNEY GENERAL SHALL CONTACT THE PROSECUTING ATTORNEY OF THE COUNTY IN WHICH THE CRIMINALLY INJURIOUS CONDUCT OCCURRED AND THE LAW ENFORCEMENT AGENCY THAT ACTIVELY INVESTIGATED THE CRIMINALLY INJURIOUS CONDUCT, AND REQUEST THAT THEY PROVIDE INFORMATION ON THE CRIMINALLY INJURIOUS CONDUCT AND RELATED MATTERS. THE PROSECUTING ATTORNEY AND ANY OFFICER OR EMPLOYEE OF THE OFFICE OF THE PROSECUTING ATTORNEY OR OF THE LAW ENFORCEMENT AGENCY SHALL BE IMMUNE FROM ANY CIVIL LIABILITY THAT MIGHT OTHERWISE BE INCURRED AS THE RESULT OF PROVIDING INFORMATION ON THE CRIMINALLY INJURIOUS CONDUCT AND RELATED MATTERS TO THE ATTORNEY GENERAL.

(B) The clerk, upon receipt of the attorney general's finding of fact and recommendation for a claim for an award of repara-

§ 2743.56 [Application for reparation awards; contents.]

(A) A claim for an award of reparations shall be commenced by filing an application for an award of reparations with the clerk of the court of claims or in the court of common pleas pursuant to division (B) of this section.

(B) A claimant who files for an award of reparations in a court of common pleas shall file in the court of common pleas of the county of his residence, or if he is not a resident of this state, in the court of common pleas of the county in which the criminally injurious conduct that is the basis of the application took place. Each application shall be accompanied by a filing fee of seven dollars and fifty cents unless waived pursuant to division (B) of section 2743.57 of the Revised Code. The application shall be in a form prescribed by the clerk of the court of claims, and shall contain the following information:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant, and the relationship of the claimant to the victim;

(2) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(3) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(4) The law enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

(5) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;

(6) The economic loss that the victim, a dependent, or the claimant sustained as a result of the criminally injurious conduct;

(7) The amount of benefits or advantages that the victim, a dependent, or the claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct and the name of each collateral source;

(8) Whether the claimant is the spouse, parent, child, brother, or sister of the offender, or of his accomplice, who committed the criminally injurious conduct;

(9) A release authorizing the court of claims, the court of claims commissioners, and the staff of the attorney general to obtain any report, document, or information that relates to the determination of the claim for an award of reparations that is requested in the application;

(10) Any information that the clerk of the court of claims requires and that is reasonably related to an application for an award of reparations. The clerk of the court of claims may require the claimant to submit with the application materials to substantiate the facts that are stated in the application.

(C) All applications for an award of reparations shall be filed within one year after the occurrence of the criminally injurious conduct that is the basis of the application.

HISTORY: 136 v H 82, Eff 9-29-76.

The provisions of § 4 of HB 149 (137 v —) read as follows:

SECTION 4. (A) Notwithstanding division (C) of section 2743.56 of the Revised Code, a claim for an award of reparations, which claim is based upon criminally injurious conduct that occurred on or after January 3, 1976,

§ 2743.52 [Commissioners to determine reparation awards.]

The court of claims commissioners that are appointed pursuant to section 2743.54 of the Revised Code have jurisdiction to make awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.

(A) Shall hear and determine all matters relating to appeals from decisions of the court of claims commissioners;

(B) May order law enforcement officers as defined in division (K) of section 2901.01 of the Revised Code to provide it with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of reparations.

HISTORY: 136 v H 82, Eff 9-29-76.

Research Aids

Hearing and determination:

O-Jur3d: Crim L § 443

Am-Jur2d: Crim L §§ 25.1—25.8

§ 2743.54 [Appointment and compensation of commissioners.]

(A) The supreme court shall appoint at least three court of claims commissioners to hear claims for an award of reparations and to make awards of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code. Each commissioner shall be an attorney who has been licensed to practice law in this state for at least three years prior to appointment and shall serve at the pleasure of the supreme court and under the administrative supervision of the clerk of the court of claims.

(B) The supreme court shall fix the compensation of the court of claims commissioners which shall be paid out of the reparations special account.

Sec. 2743.55. (A) A single commissioner or a panel of court of claims commissioners shall hear and determine all matters relating to claims for an award of reparations. A claim for an award of reparations shall not be heard and determined until the expiration of the time allowed for the claimant to respond to the attorney general's finding of fact and recommendation for the claim. A single commissioner or a panel of commissioners may order law enforcement officers as defined in division (K) of section 2901.01 of the Revised Code to provide them with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable the commissioners to determine whether, and the extent to which, a claimant qualifies for an award of reparations.

Any reference in sections 2743.51 to 2743.72 of the Revised Code to action by more than a single commissioner means action by a panel of commissioners. A panel shall consist of three commissioners who may only proceed upon a majority vote.

and prior to June 30, 1977, may be filed pursuant to division (A) and (B) of section 2743.56 of the Revised Code on or before December 31, 1978. Notwithstanding division (A) of section 2743.60 of the Revised Code, a single Court of Claims Commissioner or a Panel of Court of Claims Commissioners may make an award of reparations to a claimant whose claim for an award of reparations is based upon criminally injurious conduct that occurred on or after January 3, 1976, and prior to June 30, 1977, if his claim is filed on or before December 31, 1978.

(B) A Court of Claims Commissioner, a Panel of Commissioners, or the Court of Claims shall not make an award of reparations to a claimant whose application for an award of reparations is filed pursuant to this section, if all of the following occur:

(1) A claimant has filed a timely application for an award of reparations prior to the effective date of this act.

(2) The application filed pursuant to this section is based upon the same victim and the same criminally injurious conduct upon which are based the application that was timely filed prior to the effective date of this act.

(C) All applications for an award of reparations that have, on or before the effective date of this act, been dismissed solely because they were barred by division (C) of section 2743.56 or division (A) of section 2743.60 of the Revised Code but that would have been timely filed under division (A) of this section are hereby reinstated as originally filed and shall be processed by the Clerk of the Court of Claims, the Attorney General, and the Court of Claims Commissioners pursuant to Chapter 2743. of the Revised Code and division (A) of this section.

(D) All terms used in this section have the same meaning as in section 2743.51 of the Revised Code.

(E) Within thirty days after the effective date of this act, the Clerk of the Court of Claims shall notify the clerks of the courts of common pleas and the general public of the provisions of this section.

Forms

Application for reparation by a victim of a crime. 3 Ohio Civ. Prac. § 126.08

Outlines of Procedure

Reparation award to victims of crime. Leyshon No. 336

Research Aids

Application:

O-Jur3d: Crim L § 433

Am-Jur2d: Crim L §§ 25.1—25.8

§ 2743.57 [Filing of application; indigent applicants.]

(A) The clerk of the court of claims shall establish a procedure for the filing, recording, and processing of applications for an award of reparations that are filed with clerks of the courts of common pleas.

(B) If an applicant files an affidavit stating that he is an indigent person and payment of the filing fee would create a financial hardship for him, the clerk who receives the application, pursuant to rules

established by the clerk of the court of claims, may accept the application for filing without payment of the filing fee. If the application is accepted without payment of the filing fee and an award is made pursuant to the application, the amount of the award shall be reduced by the amount of the filing fee.

(C) The clerk of the court of common pleas shall forward each application for an award of reparations to the clerk of the court of claims within seven business days.

rations, shall forward a copy of the finding and recommendation to the claimant and SHALL give the claimant an opportunity to respond in writing. After the expiration of the time allowed for the claimant's response, the clerk shall assign the claim to a court of claims commissioner.

• Sec. 2743.59. (A) The attorney general, upon receipt of an application for an award of reparations from the clerk of the court of claims, shall FULLY investigate the claim, REGARDLESS OF WHETHER ANY PERSON IS PROSECUTED OR CONVICTED FOR COMMITTING THE CRIMINALLY INJURIOUS CONDUCT ALLEGED IN THE APPLICATION. After completing the investigation, the attorney general shall make a written finding of fact and recommendation concerning an award of reparations. He shall file the findings of fact and recommendation and all information or documents that he used in his investigation with the clerk of the court of claims.

(B) The attorney general may require the claimant to supplement the application for an award of reparations with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts in the determination of whether, and the extent to which, a claimant qualifies for an award of reparations. The attorney general may depose any witness, including the claimant, pursuant to Civil Rules 28, 30, and 45.

(C) The finding of fact that is issued by the attorney general pursuant to division (A) of this section shall contain the following:

(1) Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred, and the exact nature of the conduct;

(2) Whether the criminally injurious conduct was reported to a law enforcement officer or agency, the date on which the conduct was reported, the name of the person who reported the conduct, and the reasons why the conduct was not reported to a law enforcement officer or agency within seventy-two hours after the conduct occurred;

(3) The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;

(4) A specific list of the economic loss that was sustained as a result of the criminally injurious conduct by the victim, the claimant, or a dependent;

(5) A specific list of any benefits or advantages that the victim, the claimant, or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct AND WHETHER A COLLATERAL SOURCE WOULD HAVE REIMBURSED THE CLAIMANT FOR A PARTICULAR EXPENSE IF A TIMELY CLAIM HAD BEEN MADE, AND THE EXTENT TO WHICH THE EXPENSES WOULD LIKELY HAVE BEEN REIMBURSED BY THE COLLATERAL SOURCE;

(6) Whether the claimant is the spouse, parent, child, brother, or sister of the offender, or of his accomplice, who committed the criminally injurious conduct;

(7) A DESCRIPTION OF ANY EVIDENCE IN SUPPORT OF CONTRIBUTORY MISCONDUCT BY THE CLAIMANT OR BY THE VICTIM THROUGH WHOM THE CLAIMANT CLAIMS AN AWARD OF REPARATIONS, WHETHER THE VICTIM HAS BEEN CONVICTED OF A FELONY OR HAS A RECORD OF FELONY ARRESTS UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR THE UNITED STATES, AND WHETHER THERE IS EVIDENCE THAT THE VICTIM ENGAGED IN AN ONGOING COURSE OF CRIMINAL CONDUCT WITHIN FIVE YEARS OR LESS OF THE CRIMINALLY INJURIOUS CONDUCT THAT IS THE SUBJECT OF THE CLAIM;

(8) WHETHER AN ASSIGNMENT HAS BEEN FILED PURSUANT TO DIVISION (E) OF SECTION 2743.66 OF THE REVISED CODE;

(9) Any information that is relevant to the claim for an award of reparations.

(D) The recommendation that is issued by the attorney general pursuant to division (A) of this section shall contain the following:

(1) Whether A STATEMENT AS TO WHETHER an award of reparations should be made, WHETHER PAYMENTS MADE PURSUANT TO THE AWARD SHOULD BE MADE TO the claimant, TO AN ASSIGNEE, OR JOINTLY TO THE CLAIMANT AND AN ASSIGNEE, AND WHAT the amount of the award, and PAYMENTS TO THE CLAIMANT, THE ASSIGNEE, AND TO THE CLAIMANT AND ASSIGNEE SHOULD BE;

(2) A STATEMENT AS TO whether ANY OF THE PAYMENTS MADE PURSUANT TO the award should be paid in a lump sum or in installments;

(3) If the attorney general recommends that an award not be made to the claimant, the reasons for his decision.

(E) The attorney general shall make his recommendation in accordance with sections 2743.51 to 2743.72 of the Revised Code, and shall make his recommendation within sixty days ~~or such additional time as provided by order of any commissioner upon good cause shown~~ after receiving the claim application from the clerk of the court of claims. THE ATTORNEY GENERAL MAY FILE A MOTION FOR AN EXTENSION OF THE SIXTY-DAY TIME LIMIT AND SHALL STATE SPECIFIC REASONS TO JUSTIFY THE EXTENSION. THE ATTORNEY GENERAL SHALL FILE THE MOTION FOR AN EXTENSION WITH THE CLERK OF THE COURT OF CLAIMS AND SERVE A COPY OF THE MOTION UPON THE CLAIMANT PURSUANT TO CIVIL RULE 5, AND SHALL NOTIFY THE CLAIMANT THAT HE MAY FILE A WRITTEN OBJECTION TO THE EXTENSION WITH THE CLERK OF THE COURT OF CLAIMS. A COURT OF CLAIMS COMMISSIONER, UPON A SHOWING OF GOOD CAUSE, MAY GRANT THE EXTENSION. IF AN EXTENSION IS GRANTED, THE ORDER GRANTING THE EXTENSION SHALL STATE THE SPECIFIC REASONS FOR GRANTING THE EXTENSION, AND THE CLERK SHALL SEND A COPY OF THE ORDER TO THE CLAIMANT.

(F) WITHIN TWENTY-ONE DAYS AFTER THE ATTORNEY GENERAL FILES HIS FINDING AND RECOMMENDATION CONCERNING AN AWARD OF REPARATIONS WITH THE COURT OF CLAIMS, ANY PERSON MAY FILE WITH THE CLERK OF THE COURT OF CLAIMS ANY INFORMATION THAT IS RELEVANT TO THE GRANTING OR DENIAL OF THE AWARD THAT HE REASONABLY BELIEVES WAS NOT BEFORE OR CONSIDERED BY THE ATTORNEY GENERAL IN MAKING HIS FINDING AND RECOMMENDATION. IF A COURT OF CLAIMS COMMISSIONER CONSIDERS THE INFORMATION RELEVANT, A COPY OF THE INFORMATION FILED SHALL BE SERVED UPON THE CLAIMANT AND THE ATTORNEY GENERAL. THE CLAIMANT AND THE ATTORNEY GENERAL MAY RESPOND IN WRITING TO THE INFORMATION AT ANY TIME WITHIN TEN DAYS AFTER RECEIVING A COPY OF THE INFORMATION.

• Sec. 2743.60. (A) Neither a single commissioner nor a panel of court of claims commissioners shall make an award of reparations to any claimant who did not file his application for an award of reparations within one year after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he is seeking an award of reparations. An award of reparations shall not be made to a claimant if the criminally injurious conduct upon which he bases his claim was not reported to a law enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(B) Neither a single commissioner nor a panel of commissioners shall make an award of reparations to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or accomplice. Unless a determination is made that the interests of justice require that an award be made in a particular case, an award of reparations shall not be made 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.

(C) A single commissioner or a panel of commissioners, upon a finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny a claim or reconsider and reduce an award of reparations.

(D) A single commissioner or a panel of commissioners shall reduce an award of reparations or deny a claim for an award of reparations that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is recouped from other persons, including collateral sources, and to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source. If the award or denial is conditioned upon the recoupment of the claimant's economic loss from a collateral source and it is determined that the claimant DID NOT UNREASONABLY FAIL TO PRESENT A TIMELY CLAIM TO THE COLLATERAL SOURCE AND will not receive all or part of the expected recoupment, the claim shall MAY be reopened and an award shall MAY be made in an amount equal to the amount of

expected recoupment that it is determined the claimant will not receive from the collateral source.

(E) NEITHER A SINGLE COMMISSIONER NOR A PANEL OF COMMISSIONERS SHALL MAKE AN AWARD TO A CLAIMANT WHO IS A VICTIM, OR WHO CLAIMS AN AWARD OF REPARATIONS THROUGH A VICTIM, WHO, WITHIN TEN YEARS PRIOR TO THE CRIMINALLY INJURIOUS CONDUCT THAT GAVE RISE TO THE CLAIM, WAS CONVICTED OF A FELONY OR WHO IS PROVED BY PREPONDERANCE OF THE EVIDENCE PRESENTED TO THE COMMISSIONER OR THE PANEL TO HAVE ENGAGED, WITHIN TEN YEARS PRIOR TO THE CRIMINALLY INJURIOUS CONDUCT THAT GAVE RISE TO THE CLAIM, IN CONDUCT THAT, IF PROVEN BY PROOF BEYOND A REASONABLE DOUBT, WOULD CONSTITUTE A FELONY UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR THE UNITED STATES.

(F) IN DETERMINING WHETHER TO MAKE AN AWARD OF REPARATIONS PURSUANT TO THIS SECTION, A SINGLE COMMISSIONER OR PANEL OF COMMISSIONERS SHALL CONSIDER WHETHER THERE WAS CONTRIBUTORY MISCONDUCT BY THE VICTIM OR THE CLAIMANT. A SINGLE COMMISSIONER OR A PANEL OF COMMISSIONERS SHALL DENY A CLAIM FOR AN AWARD OF REPARATIONS IF IT IS DETERMINED THAT THERE WAS CONTRIBUTORY MISCONDUCT BY THE CLAIMANT OR THE VICTIM.

IF THE ATTORNEY GENERAL RECOMMENDS THAT A CLAIM BE DENIED BECAUSE OF AN ALLEGATION OF CONTRIBUTORY MISCONDUCT THAT IS SUPPORTED BY HIS FINDING OF FACT IN DIVISION (C)(7) OF SECTION 2743.59 OF THE REVISED CODE, THE BURDEN OF PROOF ON THE ISSUE OF THAT ALLEGED CONTRIBUTORY MISCONDUCT SHALL BE UPON THE CLAIMANT, IF EITHER OF THE FOLLOWING APPLY:

(1) THE VICTIM WAS CONVICTED OF A FELONY MORE THAN TEN YEARS PRIOR TO THE CRIMINALLY INJURIOUS CONDUCT THAT IS THE SUBJECT OF THE CLAIM OR HAS A RECORD OF FELONY ARRESTS UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR THE UNITED STATES;

(2) THERE IS GOOD CAUSE TO BELIEVE THAT THE VICTIM ENGAGED IN AN ONGOING COURSE OF CRIMINAL CONDUCT WITHIN FIVE YEARS OR LESS OF THE CRIMINALLY INJURIOUS CONDUCT THAT IS THE SUBJECT OF THE CLAIM.

(G) NEITHER A SINGLE COMMISSIONER NOR A PANEL OF COMMISSIONERS SHALL MAKE AN AWARD OF REPARATIONS TO A CLAIMANT IF THE CRIMINALLY INJURIOUS CONDUCT THAT CAUSED THE INJURY OR DEATH THAT IS THE SUBJECT OF THE CLAIM OCCURRED TO A VICTIM WHO WAS EIGHTEEN YEARS OF AGE OR OLDER AND WHILE THE VICTIM, AFTER BEING CONVICTED OF OR PLEADING GUILTY TO AN OFFENSE, WAS SERVING A SENTENCE OF IMPRISONMENT IN ANY DETENTION FACILITY, AS DEFINED IN SECTION 2921.01 OF THE REVISED CODE.

CONTINUED

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(H) IF A CLAIMANT UNREASONABLY FAILS TO PRESENT A CLAIM TIMELY TO A SOURCE OF BENEFITS OR ADVANTAGES THAT WOULD HAVE BEEN A COLLATERAL SOURCE AND THAT WOULD HAVE REIMBURSED THE CLAIMANT FOR ALL OR A PORTION OF A PARTICULAR EXPENSE, A SINGLE COMMISSIONER OR A PANEL OF COMMISSIONERS MAY REDUCE AN AWARD OF REPARATIONS OR DENY A CLAIM FOR AN AWARD OF REPARATIONS TO THE EXTENT THAT IT IS REASONABLE TO DO SO.

(I) Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or the death of that victim shall not exceed twenty-five thousand dollars in the aggregate.

● Sec. 2743.61. (A) The attorney general may appeal conclusions of law made by a panel of court of claims commissioners and a claimant may appeal an award of reparations, the amount of an award of reparations, or the denial of a claim for an award of reparations that is made by a panel of court of claims commissioners. If the determination of the commissioners with respect to any claim for an award of reparations is appealed, the court of claims shall hear and determine the appeal on the basis of the record of the hearing before the commissioners, including the original award or denial made by a single commissioner, the finding of fact and recommendation of the attorney general, any information or documents that the attorney general used in his investigation, ANY INFORMATION OR DATA PROVIDED TO THE COURT OF CLAIMS PURSUANT TO DIVISION (B) OF SECTION 2743.54 OF THE REVISED CODE, and any briefs or oral arguments that may be requested by the court. If upon hearing and consideration of the record and evidence, the court decides that the decision of the commissioners appealed from is reasonable and lawful, it shall affirm the same, but if the court decides that the decision of the commissioners is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter judgment thereon.

(B) Notices of an appeal concerning an award of reparations shall be filed within thirty days after the date on which the award or the denial of a claim is made by the commissioners. If a notice of appeal is not filed within the thirty-day period, the award or denial of the claim is final unless the court of claims in the interests of justice allows the appeal.

§ 2743.62 [Records or communications not privileged; mental or physical examination of claimant.]

(A) There is no privilege, except the privileges arising from the attorney-client relationship, as to communications or records that are relevant to the physical, mental, or emotional condition of the claimant or victim in a proceeding under sections 2743.51 to 2743.72 of the Revised Code in which that condition is an element.

(B) If the mental, physical, or emotional condition of a victim or claimant is material to a claim for an award of reparations, a single commissioner or a panel of commissioners 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 and upon notice to the person to be examined and to the claimant and the attorney general. 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 who performs the examination or autopsy to file with the clerk of the court of claims a detailed written report of the examination or autopsy. The report shall set

out the findings, including the results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(C) On request of the person examined, the clerk of the court of claims shall furnish him a copy of the report. If the victim is deceased, the clerk of the court of claims, on request, shall furnish the claimant a copy of the report.

(D) A single commissioner or a panel of commissioners may require the claimant to supplement the application for an award of reparations with any reasonably available medical or psychological reports relating to the injury for which the award of reparations is claimed.

(E) The court, a single commissioner, a panel of commissioners, or the attorney general, in a claim arising out of a violation of sections 2907.02 to 2907.07 or 2907.12 of the Revised Code, shall not request the victim or the claimant to supply, or permit any person to supply, any evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, or reputation evidence of the victim's sexual activity unless it involves evidence of the origin of semen, pregnancy, or disease or evidence of the victim's past sexual activity with the offender and only to the extent that the court, the commissioners, or the attorney general finds that the evidence is relevant to a fact at issue in the claim.

HISTORY: 136 v H 82. Eff 9-29-76.

Research Aids

Action by commissioners:

O-Jur3d: Crim L § 435

Am-Jur2d: Crim L §§ 25.1—25.8

ALR

Constitutionality of "rape shield" statute restricting use of evidence of victim's sexual experiences. 1 ALR4th 283.

Right of party to have his attorney or physician, or a court reporter, present during his physical or mental examination by a court-appointed expert. 7 ALR3d 881.

§ 2743.63 [Contempt sanction not available.]

If a person refuses to comply with an order under sections 2743.51 to 2743.72 of the Revised Code, or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim for an award of reparations, a single commissioner or a panel of court of claims commissioners may make any just order including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of

its powers and duties, a single commissioner or a panel of commissioners may petition the court of claims for an appropriate order, but the court of claims shall not find a person in contempt for refusal to submit to a mental or physical examination.

● Sec. 2743.64. A single commissioner or a panel of court of claims commissioners may make an award of reparations whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave 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.

IF THE PROSECUTING ATTORNEY OF THE COUNTY IN WHICH THE CRIMINALLY INJURIOUS CONDUCT ALLEGEDLY OCCURRED OR THE ATTORNEY GENERAL REQUESTS THE SUSPENSION OF PROCEEDINGS IN ANY CLAIM FOR AN AWARD OF REPARATIONS AND IF THE REQUEST IS MADE BECAUSE OF THE COMMENCEMENT OF A CRIMINAL PROSECUTION, A single commissioner or a panel of commissioners shall MAY, BECAUSE A CRIMINAL PROSECUTION HAS BEEN COMMENCED OR IS IMMINENT, suspend, upon request of the attorney general, the proceedings in any claim for an award of reparations pending disposition of a criminal prosecution that has been commenced or is imminent FOR A DEFINITE PERIOD OF TIME, but AND may make a tentative award under section 2743.67 of the Revised Code.

● Sec. 2743.65. (A) As part of an order, a single commissioner or a panel of court of claims commissioners shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing a claimant under sections 2743.51 to 2743.72 of the Revised Code. Additional attorney's fees may be awarded by the court of claims in the event of appeal. Attorney's fees may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations, and attorney's fees may be awarded whether or not an award of reparations is made. An attorney who represents an applicant for an award of reparations shall not contract for or receive any larger sum than the amount allowed under this section CHARGE THE APPLICANT FOR THE SERVICES RENDERED IN RELATION TO THAT REPRESENTATION AND SHALL APPLY TO THE COURT OF CLAIMS FOR PAYMENT FOR THE REPRESENTATION.

(B) Each witness who appears in a hearing on a claim for an award of reparations shall receive compensation in an amount equal to that received by witnesses in civil cases as provided in section 2335.06 of the Revised Code.

● Sec. 2743.66. (A) An order of a single commissioner or a panel of court of claims commissioners granting an award of reparations may provide for the payment of the 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 shall not be paid in a lump sum. Except as provided in division (B) of this section, the part of an award not paid in a lump sum shall be paid in installments.

(B) Upon the motion of the claimant OR UPON THE RECOMMENDATION OF THE ATTORNEY GENERAL, a single commissioner or a panel of commissioners may commute future economic loss, other than allowable expense, to a lump sum but only upon a finding that either of the following applies:

(1) The award in a lump sum will promote the interests of the claimant;

(2) The present value of all future economic loss, other than allowable expense, does not exceed one thousand dollars.

(C) A single commissioner or a panel of commissioners may make an award for future economic loss payable in installments only for a period as to which future economic loss can reasonably be determined. An award for future economic loss payable in installments may be reconsidered and modified upon a finding that a material and substantial change of circumstances has occurred.

(D) An award is not subject to execution, attachment, garnishment, or other process, except that, upon receipt of an award by a claimant, the part of the award that is for allowable

expense OR FUNERAL EXPENSE is not exempt from such action by a creditor to the extent that he provided products, services, or accommodations the costs of which are included in the award and the part of the award that is for work loss shall not be exempt from such action to secure payment of alimony, maintenance, or child support.

(E) An assignment or agreement to assign a right to an award of reparations is unenforceable, EXCEPT THAT AN ASSIGNMENT OF A RIGHT TO RECEIVE PAYMENT OF ALL OR ANY PART OF AN AWARD OF REPARATIONS SHALL BE ENFORCEABLE AND SHALL BE HONORED BY A SINGLE COMMISSIONER OR A PANEL OF COMMISSIONERS, IF ALL OF THE FOLLOWING APPLY:

(1) PURSUANT TO THIS SECTION, THE CLAIMANT OR THE VICTIM THROUGH WHOM HE CLAIMS AN AWARD OF REPARATIONS ASSIGNS HIS RIGHT TO RECEIVE PAYMENT OF ALL OR ANY PART OF AN AWARD OF REPARATIONS FOR UNREIMBURSED ALLOWABLE EXPENSES FOR PRODUCTS, SERVICES, OR ACCOMMODATIONS PROVIDED BY THE ASSIGNEE AND INCLUDED IN AN AWARD OF REPARATIONS;

(2) THE UNREIMBURSED ALLOWABLE EXPENSES FOR PRODUCTS, SERVICES, OR ACCOMMODATIONS PROVIDED BY THE ASSIGNEE THAT ARE THE SUBJECT OF THE ASSIGNMENT AND THAT ARE INCLUDED IN AN AWARD OF REPARATIONS EXCEED ONE THOUSAND DOLLARS;

(3) THE ASSIGNEE DELIVERS THE ASSIGNMENT TO THE ATTORNEY GENERAL BEFORE THE ATTORNEY GENERAL HAS SUBMITTED HIS FINDING OF FACT AND RECOMMENDATION PURSUANT TO SECTION 2743.59 OF THE REVISED CODE;

(4) THE ASSIGNMENT DELIVERED TO THE ATTORNEY GENERAL APPEARS ON A SEPARATE DOCUMENT THE EXCLUSIVE SUBJECT OF WHICH IS "ASSIGNMENT OF A RIGHT TO PAYMENT OF ALL OR PART OF AN AWARD OF REPARATIONS" AND WHICH IS DULY SIGNED AND DATED BY THE ASSIGNOR AND ATTESTED BY ONE OR MORE WITNESSES;

(5) AFTER AN INVESTIGATION BY THE ATTORNEY GENERAL, A SINGLE COMMISSIONER OR A PANEL OF COMMISSIONERS DETERMINES THAT THE ASSIGNMENT IS VALID AND THAT IT WAS ENTERED INTO VOLUNTARILY BY ALL PARTIES.

(F) IF AN ASSIGNMENT MEETS THE REQUIREMENTS OF DIVISIONS (E)(1) TO (5) OF THIS SECTION, THE ORDER GRANTING AN AWARD OF REPARATIONS SHALL SEPARATELY STATE THE AMOUNT OF THE AWARD OR ANY PART OF THE AWARD THAT IS BASED UPON THE UNREIMBURSED ALLOWABLE EXPENSES THAT ARE THE SUBJECT OF THE ASSIGNMENT, AND THE ASSIGNMENT SHALL BE RECOGNIZED ONLY FOR THAT AMOUNT. IF THE ASSIGNEE HAS NOT COOPERATED IN THE INVESTIGATION OF THE CLAIM, A SINGLE COMMISSIONER OR A PANEL OF COMMISSIONERS MAY REFUSE TO RECOGNIZE AN ASSIGNMENT, UPON GOOD CAUSE SHOWN. THE CLERK OF THE COURT OF CLAIMS SHALL SEND A COPY OF THE ORDER GRANTING OR DENYING AN AWARD TO THE ASSIGNEE BY REGULAR MAIL.

IF AN AWARD IS LIMITED PURSUANT TO DIVISION (C) OR (D) OF SECTION 2743.60 OF THE REVISED CODE, A SINGLE COMMISSIONER OR A PANEL OF COMMISSIONERS MAY ORDER THAT PAYMENT BE MADE TO ALL CLAIMANTS AND THEIR ASSIGNEES UPON A PRO RATA BASIS. A SINGLE COMMISSIONER OR A PANEL OF COMMISSIONERS MAY DETERMINE THE TERMS OF THE AWARD ISSUED, INCLUDING WHETHER THE AWARD IS TO BE PAID JOINTLY TO THE CLAIMANT AND ASSIGNEE OR SEPARATELY TO THE CLAIMANT AND ASSIGNEE.

THE ASSIGNEE SHALL NOT BE CONSIDERED A CLAIMANT OR PARTY IN A CLAIM FOR AN AWARD OF REPARATIONS THAT IS FILED PURSUANT TO CHAPTER 2743. OF THE REVISED CODE. THE ASSIGNEE HAS NO RIGHT TO APPEAR IN ANY HEARING BEFORE A COMMISSIONER, PANEL OF COMMISSIONERS, OR JUDGE OF THE COURT OF CLAIMS OR TO OBJECT TO OR APPEAL ANY DETERMINATION MADE BY A COMMISSIONER, PANEL OF COMMISSIONERS, OR JUDGE OF THE COURT OF CLAIMS. ANY RECORDS OF THE ASSIGNEE THAT ARE RELATED TO THE ASSIGNMENT SHALL BE PRESERVED FOR FIVE YEARS AFTER THE ASSIGNMENT IS DELIVERED TO THE ATTORNEY GENERAL. AFTER THE ASSIGNMENT IS EXECUTED, THE ASSIGNEE SHALL NOT PURSUE COLLECTION EFFORTS AGAINST THE ASSIGNOR OR THE CLAIMANT WHO CLAIMS THROUGH THE ASSIGNOR UNTIL A FINAL DETERMINATION HAS

BEEN MADE BY A SINGLE COMMISSIONER OR A PANEL OF COMMISSIONERS IN THE COURT OF CLAIMS, EXCEPT TO THE EXTENT THAT DIRECT PAYMENT HAS BEEN MADE TO THE ASSIGNOR OR THE CLAIMANT WHO CLAIMS THROUGH THE ASSIGNOR FROM A COLLATERAL SOURCE.

UPON RECEIPT OF PAYMENT FROM ANY PERSON INCLUDING A COLLATERAL SOURCE OF ALL OR A PART OF THE ALLOWABLE EXPENSES THAT ARE THE SUBJECT OF THE ASSIGNMENT, THE ASSIGNEE SHALL IMMEDIATELY NOTIFY THE ATTORNEY GENERAL OF THE PAYMENT. THE ASSIGNEE SHALL RETURN ANY MONEYS ALREADY ACCEPTED FROM THE REPARATIONS SPECIAL ACCOUNT THAT REPRESENT A DUPLICATE PAYMENT OF ALLOWABLE EXPENSES THAT ARE THE SUBJECT OF THE ASSIGNMENT. IF NOTICE OF PAYMENT IS RECEIVED FROM THE ASSIGNEE AFTER THE ATTORNEY GENERAL HAS SUBMITTED THE FINDING OF FACT AND RECOMMENDATION, THE ATTORNEY GENERAL SHALL IMMEDIATELY NOTIFY THE COURT OF CLAIMS OF THE PAYMENT. IF PAYMENT HAS BEEN MADE FROM THE REPARATIONS SPECIAL ACCOUNT TO AN ASSIGNEE WHEN THE ATTORNEY GENERAL RECEIVES FROM THE ASSIGNEE THE NOTICE OF PAYMENT CONCERNING PAYMENT FROM ANY PERSON INCLUDING A COLLATERAL SOURCE, THE ATTORNEY GENERAL SHALL INSTITUTE ANY NECESSARY SUBROGATION PROCEEDINGS PURSUANT TO SECTION 2743.72 OF THE REVISED CODE.

• Sec. 2743.67. IF NOTWITHSTANDING THE FACT THAT THE ONE-YEAR PERIOD WITHIN WHICH A PERSON MAY FILE AN APPLICATION FOR AN AWARD OF REPARATIONS HAS NOT YET EXPIRED, IF A SINGLE COMMISSIONER OR A PANEL OF COURT OF CLAIMS COMMISSIONERS DETERMINE 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 REPAYED BY AND RECOVERABLE FROM THE CLAIMANT TO THE EXTENT THAT IT EXCEEDS THE FINAL AWARD.

• Sec. 2743.68. (A) A claimant to whom an award of reparations has been made or a claimant whose award was conditioned or denied because of actual or potential recovery from a collateral source may file a supplemental reparations application if his claim has not been dormant for five years.

(B) A claim becomes dormant when any of the following occurs:

(1) The time permitted for objecting to the original determination or award of a single commissioner has passed without an objection being made;

(2) The time permitted for appealing the original determination or award of a panel of commissioners has passed without an appeal being made;

(3) The court journalizes its final order in claims that are appealed from a panel of commissioners IN A CLAIM IF A COMMISSIONER, PANEL OF COMMISSIONERS, OR JUDGE OF THE COURT OF CLAIMS HAS, WITHIN FIVE YEARS PRIOR TO THE FILING OF THE SUPPLEMENTAL APPLICATION, MADE ANY OF THE FOLLOWING DETERMINATIONS:

(A) THAT AN AWARD, SUPPLEMENTAL AWARD, OR INSTALLMENT AWARD BE GRANTED;

(B) THAT AN AWARD, SUPPLEMENTAL AWARD, OR INSTALLMENT AWARD BE CONDITIONED OR DENIED BECAUSE OF ACTUAL OR POTENTIAL RECOVERY FROM A COLLATERAL SOURCE;

(C) THAT AN AWARD, SUPPLEMENTAL AWARD, OR INSTALLMENT AWARD BE DENIED BECAUSE THE CLAIMANT HAD NOT INCURRED ANY ECONOMIC LOSS AT THAT TIME.

• Sec. 2743.69. The court of claims shall prepare and transmit annually to the governor and the general assembly a report of the activities of the court of claims commissioners. The report shall include the number of claims filed and the amount asked in each claim filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied, including the average size of claims and awards; the balance in the reparations special account with a listing by source and amount of the moneys that have been deposited in the special account; the amount that has been withdrawn from the special account, including separate listings of the administrative costs incurred by the court of claims, salaries of commissioners, compensation of judges and court personnel, the amount awarded as attorney's fees, and the amount withdrawn by the attorney general after certification of his costs of investigation and recommendation. The attorney gen-

§ 2743.71 [Information to be furnished to victim or relatives; publicizing availability of awards.]

(A) Any law enforcement agency that investigates, and any prosecuting attorney, city director of law, village solicitor, or similar prosecuting authority who prosecutes, an offense committed in this state shall upon first contact with the victim or his family or dependents, give the victim or his family or dependents a copy of an information card or other printed material provided by the clerk of the court of claims pursuant to division (B) of this section and explain, upon request, the information on the card or material to the victim or his family or dependents.

(B) The clerk of the court of claims shall have printed, and shall provide to law enforcement agencies, prosecuting attorneys, city directors of law, village solicitors, and similar prosecuting authorities, cards or other materials that contain information explaining awards of reparations. The information on the cards or other materials shall include, but shall not be limited to, the following statements:

(1) Awards of reparations are limited to losses that are caused by physical injury resulting from criminally injurious conduct;

(2) Reparations applications are required to be filed within one year after the date of the criminally injurious conduct;

(3) An attorney who represents an applicant for an award of reparations cannot charge the applicant for the services rendered in relation to that representation but is required to apply to the court of claims for payment for the representation;

(4) Applications for awards of reparations may be obtained from, and are to be filed with, the clerk of the court of claims or the clerk of the court of common pleas.

(C) The court of claims commissioners, with the approval of the attorney general, may order that a reasonable amount of money be paid out of the reparations special account, subject to the limitation imposed by division (D) of this section, to the clerk of the court of claims to be used by the clerk to publicize the availability of awards of reparations.

(D) During any fiscal year of the court of claims, the total expenditure for the printing and providing of information cards or other materials pursuant to division (B) of this section and for the publicizing of the availability of awards of reparations pursuant to division (C) of this section shall not exceed two per cent of the total of all court costs deposited, in accordance with section 2743.70 of the Revised Code, in the reparations special account during the immediately preceding fiscal year of the court.

• Sec. 2743.72. (A) If an award of reparations is made under sections 2743.51 to 2743.71 of the Revised Code, the state, upon the payment of the award or a part of the award, shall be IS subrogated to all of the claimant's rights to receive or recover benefits or advantages for economic loss for which an award of reparations was made from a source that is a collateral source or would be a collateral source if it were readily available to the victim or claimant. The claimant may sue the offender for any damages or injuries caused by the offender's criminally injurious conduct and not compensated for by an award of reparations. The claimant may join with the attorney general as co-plaintiff in any action against the offender. All moneys that are collected by the state pursuant to its right of subrogation as provided in this section shall be deposited in the reparations special account.

(B) IF PAYMENT IS MADE TO AN ASSIGNEE PURSUANT TO DIVISIONS (E) AND (F) OF SECTION 2743.66 OF THE REVISED CODE AS A RESULT OF THE PAYMENT OF AN AWARD OF REPARATIONS, THE STATE IS SUBROGATED TO ALL OF THE ASSIGNEE'S RIGHTS TO RECEIVE OR RECOVER BENEFITS OR ADVANTAGES FOR ALLOWABLE EXPENSES FOR WHICH A REPARATIONS PAYMENT WAS MADE, FROM A SOURCE THAT IS A COLLATERAL SOURCE OR WOULD BE A COLLATERAL SOURCE IF IT WERE READILY AVAILABLE TO THE VICTIM, CLAIMANT, OR ASSIGNEE. ALL MONEYS THAT ARE COLLECTED BY THE STATE PURSUANT TO ITS RIGHTS OF SUBROGATION AS PROVIDED IN THIS SECTION SHALL BE DEPOSITED IN THE REPARATIONS SPECIAL ACCOUNT.

(1) The clerk of the court of claims shall forward a certified copy of the order granting the award to the auditor of state and the office of budget and management.

(2) Upon receipt of the certified copy of the order granting the award from the clerk of the court of claims pursuant to division (B)(1) of this section and of the certificate of the office of budget and management pursuant to division (B)(3) of this section, the auditor of state shall draw a warrant on the treasurer of state payable to the claimant, TO AN ASSIGNEE OF THE CLAIMANT, OR TO THE CLAIMANT AND HIS ASSIGNEE IN the amount of the award set forth in the certified copy of the order.

(3) The expense shall be charged against available unencumbered moneys in the reparations special account. The availability of unencumbered moneys shall be certified to the auditor of state by the office of budget and management prior to the drawing of the warrant. If the award is to be paid in installments, the office of budget and management shall certify only the amount of the award that will fall due during the current appropriation period.

(4) If the office of budget and management determines that sufficient unencumbered moneys do not exist in the reparations special account, it shall make application for payment of the award out of the emergency purposes appropriations account or any other appropriation for emergencies or contingencies and payment out of this account or other appropriation shall be authorized if there are sufficient moneys greater than the sum total of then pending emergency purposes fund requests or requests for releases from the other appropriations.

(5) If sufficient moneys do not exist in the emergency purposes appropriations account or any other appropriation for emergencies or contingencies to pay the award, the auditor of state shall request the general assembly to make an appropriation sufficient to pay the award, and no warrant shall be drawn until the office of budget and management certifies to the auditor of state that the appropriation has been made. The auditor

of state shall make this appropriation request during the current biennium and during each succeeding biennium until a sufficient appropriation is made. If, prior to the time that an appropriation is made by the general assembly pursuant to this division, the reparations special account has sufficient unencumbered funds to pay the award or part of the award, the available funds shall be used to pay the award or part of the award, and the appropriation request shall be amended to request only sufficient funds to pay that part of the award that is unpaid.

(C) No order granting an award may be forwarded by the clerk of the court of claims to the auditor of state or the office of budget and management until all appeals have been determined and all rights to appeal exhausted, except as otherwise provided in this section. If any party to a claim for an award of reparations appeals from only a portion of an award, and a remaining portion provides for the payment of money by the state, a certified copy of the order, together with a copy of the notice of appeal, shall be forwarded to the auditor of state and the office of budget and management, and that part of the award calling for the payment of money by the state and not a subject of the appeal shall be processed for payment as described in this section.

• Sec. 2743.191. (A) There is hereby created a reparations special account in the state special revenue fund that shall be used only for the payment of awards of reparations that are granted by the court of claims commissioners, the compensation of the court of claims commissioners, the compensation of judges necessary to hear and determine appeals from the commissioners, the compensation of any personnel needed by the court of claims to administer sections 2743.51 to 2743.72 of the Revised Code, the compensation of witnesses as provided in division (B) of section 2743.65 of the Revised Code, other administrative costs of hearing and determining claims for an award of reparations by the court of claims commissioners and of hearing and determining appeals from the commissioners by the court of claims, the costs of investigation and recommendation as certified by the attorney general, and, subject to division (D) of section 2743.71 of the Revised Code, the costs associated with the printing and providing of information cards or other printed materials to law enforcement agencies and prosecuting authorities and with publicizing the availability of awards of reparations pursuant to section 2743.71 of the Revised Code. All costs paid pursuant to section 2743.70 of the Revised Code, all appropriations that are made to the auditor of state for the payment of awards of reparations, and all moneys collected by the state pursuant to its right of subrogation provided in section 2743.72 of the Revised Code shall be deposited in the reparations special account.

(B) In making an award of reparations, a single commissioner or a panel of court of claims commissioners shall render the award against the state and the auditor of state as its agency for payment of the award. The award shall be accomplished only through the following procedure, which may be enforced by writ of mandamus directed to the appropriate official:

* * *

§ 2951.02 [Criteria for and against probation or suspension of sentence; conditions.]

(A) In determining whether to suspend sentence of imprisonment and place an offender on probation or to otherwise suspend an offender's sentence of imprisonment pursuant to division (D)(2) or (4) of section 2929.51 of the Revised Code, the court shall consider the risk that the offender will commit another offense and the need for protecting the public from the risk, the nature and circumstances of the offense, and the history, character, and condition of the offender.

(B) The following do not control the court's discretion, but shall be considered in favor of placing an offender on probation or in favor of otherwise suspending an offender's sentence of imprisonment pursuant to division (D)(2) or (4) of section 2929.51 of the Revised Code:

(9) The offender has made or will make restitution or reparation to the victim of his offense for the injury, damage, or loss sustained.

(10) Imprisonment of the offender will entail undue hardship to himself or his dependents.

(C) When an offender is placed on probation or his sentence is otherwise suspended pursuant to division (D)(2) or (4) of section 2929.51 of the Revised Code, the probation or other suspension shall be at least on condition that, during the period of probation or other suspension, he shall abide by the law and not leave the state without the permission of the court or his probation officer. In the interests of doing justice, rehabilitating the offender, and insuring his good behavior, the court may impose additional requirements on the offender, including, but not limited to, requiring the offender to make restitution for all or part of the property damage that is caused by his offense and for all or part of the value of the property that is the subject of any theft offense, as defined in division (K) of section 2913.01 of the Revised Code, that the person committed. Compliance with the additional requirements shall also be a condition of the offender's probation or other suspension.

(D) The following do not control the court's discretion, but shall be considered against placing an offender on probation or against otherwise suspending an offender's sentence of imprisonment pursuant to division (D)(2) or (4) of section 2929.51 of the Revised Code:

(1) The offender has recently violated the conditions of any probation, parole, or pardon, or any suspension pursuant to division (D)(2) or (4) of section 2929.51 of the Revised Code, previously granted him.

(2) There is a substantial risk that while at liberty during the period of probation or other suspension the offender will commit another offense.

(3) The offender is in need of correctional or rehabilitative treatment that can best be provided by his commitment to a penal or reformatory institution.

(4) Regardless of whether the offender knew the age of the victim, the victim of the offense was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the offense.

* * *

§ 2335.05 Witness fees and mileage. (GC § 3011)

In all cases or proceedings not specified in sections 2335.03 and 2335.08 of the Revised Code, each person subpoenaed as a witness shall be allowed one dollar for each day's attendance and the mileage allowed in courts of record. When not subpoenaed each person called upon to testify in a case or proceeding shall receive twenty-five cents. Such fee shall be taxed in the bill of costs, and if incurred in a state or ordinance case, or in a proceeding before a public officer, board, or commission, the fee shall be paid out of the proper public treasury, upon the certificate of the court, officer, board, or commission conducting the proceeding.

§ 2335.06 Witness fees in civil cases.

Each witness in civil cases shall receive the following fees:

(A) Twelve dollars for each full day's attendance and six dollars for each half day's attendance at a court of record, mayor's court, or before a person authorized to take depositions, to be taxed in the bill of costs. Each witness shall also receive ten cents for each mile necessarily traveled to and from his place of residence to the place of giving his testimony, to be taxed in the bill of costs.

(B) For attending a coroner's inquest, the same fees and mileage provided by division (A) of this section, payable from the county treasury on the certificate of the coroner.

(C) As used in this section, "full day's attendance" means a day on which a witness is required or requested to be present at proceedings before and after twelve noon regardless of whether he actually testifies; "half day's attendance" means a day on which a witness is required or requested to be present at proceedings either before or after twelve noon, but not both, regardless of whether he actually testifies.

§ 2335.08 Witness fees in criminal cases.

Each witness attending, under recognizance or subpoena issued by order of the prosecuting attorney or defendant, before the grand jury or any court of record, in criminal causes, shall be allowed the same fees as provided by section 2335.06 of the Revised Code in civil causes, to be taxed in only one cause when such witness is attending in more causes than one on the same days, unless otherwise directed by special order of the court. When certified to the county auditor by the clerk of the court, such fees shall be paid from the county treasury, and except as to the grand jury, taxed in the bill of costs. Each witness attending before a judge of a county court, magistrate, or mayor, under subpoena in criminal cases, shall be allowed the fees provided by such section for witnesses in the court of common pleas. In state cases such fees shall be paid out of the county treasury, and in ordinance cases they shall be paid out of the treasury of the municipal corporation, upon the certificates of the judge or magistrate, and they shall be taxed in the bill of costs.

When the fees enumerated by this section have been collected from the judgment debtor, they shall be paid to the public treasury from which such fees were advanced.

* * *

§ 2921.03 Intimidation.

(A) No person, knowingly and by force or by unlawful threat of harm, shall attempt to influence, intimidate, or hinder a public servant, party of official, or witness in the discharge of his duty.

(B) Whoever violates this section is guilty of intimidation, a felony of the third degree.

* * *

§ 2929.14 [Imposition of fine for felony; notice to victim of right to apply for reparations award.]

(A) In determining whether to impose a fine for a felony and the amount and method of payment of a fine, the court shall consider the nature and circumstances of the offense, the victim impact statement prepared pursuant to section 2947.051 [2947.05.1] of the Revised Code, the history, character,

and condition of the offender, and the ability and resources of the offender and the nature of the burden that payment of a fine will impose on him.

(B) The court shall not impose a fine in addition to imprisonment for felony, unless a fine is specially adapted to deterrence of the offense or the correction of the offender, or the offense was committed with purpose to establish, maintain, or facilitate an activity of a criminal syndicate, as defined in section 2923.04 of the Revised Code, or the offense was committed for hire or for purpose of gain.

(C) The court shall not impose a fine or fines for felony that, in the aggregate and to the extent not suspended by the court, exceed the amount that the offender is or will be able to pay by the method and within the time allowed without undue hardship to himself or his dependents, or will prevent him from making restitution or reparation to the victim of his offense.

* * *

§ 2929.22 Imposing sentence for misdemeanor.

(A) In determining whether to impose imprisonment or a fine, or both, for misdemeanor, and in determining the term of imprisonment and the amount and method of payment of a fine, the court shall consider the risk that the offender will commit another offense and the need for protecting the public therefrom, the nature and circumstances of the offense, the history, character, and condition of the offender and his need for correctional or rehabilitative treatment, and the ability and resources of the offender and the nature of the burden that payment of a fine will impose on him.

(B) The following do not control the court's discretion, but shall be considered in favor of imposing imprisonment for misdemeanor:

(1) The offender is a repeat or dangerous offender;

(2) Regardless of whether or not the offender knew the age of the victim, the victim of the offense was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the offense.

(F) The court shall not impose a fine or fines which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to himself or his dependents, or will prevent him from making restitution or reparation to the victim of his offense.

(C) At the time of sentencing or as soon as possible after sentencing, the court shall notify the victim of the offense of his right to file an application for an award of reparations pursuant to sections 2743.51 to 2743.72 of the Revised Code.

§ 2929.12 [Discretion of court in determining minimum term of imprisonment for felony.]

(A) In determining the minimum term of imprisonment to be imposed for a felony for which an indefinite term of imprisonment is imposed, the court shall consider the risk that the offender will commit another crime and the need for protecting the public from the risk; the nature and circumstances of the offense; the victim impact statement prepared pursuant to section 2947.051 [2947.05.1] of the Revised Code, if a victim impact statement is required by that section; and the history, character, and condition of the offender and his need for correctional or rehabilitative treatment.

(B) The following do not control the court's discretion, but shall be considered in favor of imposing a longer term of imprisonment for a felony for which an indefinite term of imprisonment is imposed:

(1) The offender is a repeat or dangerous offender;

(2) Regardless of whether the offender knew the age of the victim, the victim of the offense was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the offense;

(3) The victim of the offense has suffered severe social, psychological, physical, or economic injury as a result of the offense.

[§ 2947.05.1] § 2947.051 [Victim impact statement to be considered in imposing sentence.]

(A) In all criminal cases in which a person is convicted of, pleads guilty to and the plea is accepted to, or pleads no contest to and is found guilty of a felony, the court shall, prior to sentencing the offender, order the preparation of a victim impact statement by the department of probation of the county in which the victim of the offense resides, by the court's own regular probation officer, or by a victim assistance program that is operated by the state, any county or municipal corporation, or any

other governmental entity if the offender caused, attempted to cause, threatened to cause, or created the risk of physical harm to the victim of the offense. The court shall, in accordance with sections 2929.12 and 2929.14 of the Revised Code, consider the victim impact statement in determining the sentence to be imposed upon the offender.

(B) Each victim impact statement shall identify the victim of the offense, itemize any economic loss suffered by the victim as a result of the offense, identify any physical injury suffered by the victim as a result of the offense and the seriousness and permanence of the injury, identify any change in the victim's personal welfare or familial relationships as a result of the offense and any psychological impact experienced by the victim or the victim's family as a result of the offense, and contain any other information related to the impact of the offense upon the victim that the court requires.

(C) A victim impact statement shall be kept confidential and is not a public record as defined in section 149.43 of the Revised Code. However, the court may furnish copies of the statement to both the defendant or his counsel and the prosecuting attorney. Any copies of a victim impact statement that are made available to the defendant or his counsel or to the prosecuting attorney shall be returned by the person to whom they were made available to the court immediately following the imposition of sentence upon the defendant.

[PROPERTY RECOVERED BY POLICE; DISPOSITION]

§ 737.29 Property recovered by police. (GC §§ 4398, 4399)

Stolen or other property recovered by members of the police force of a municipal corporation shall be deposited and kept in a place designated by the mayor. Each such article shall be entered in a book kept for that purpose, with the name of the owner, if ascertained, the person from whom taken, the place where found with general circumstances, the date of its receipt, and the name of the officer receiving it.

An inventory of all money or other property shall be given to the party from whom taken, and in case it is not claimed by some person within thirty days after arrest and seizure it shall be delivered to the person from whom taken, and to no other person, either attorney, agent, factor, or clerk, except by special order of the mayor.

§ 737.30 Deposit [of] stolen property; prohibition. (GC § 12937)

No officer, patrolman, or other member of the police force in a municipal corporation shall neglect or refuse to deposit property taken or found by him in possession of a person arrested. Any conviction for a violation of this section shall vacate the office of the person so convicted.

HISTORY: GC § 12937; RS § 6858-2; 98 v 61. Eff 10-1-53.

Research Aids

Grounds for removal

Page: Mun. Corp. § 184

38 O-Jur2d: Mun. Corp. § 156

§ 737.31 Disposition to claimant. (GC § 4400)

If, within thirty days, the money or property recovered under section 737.29 of the Revised Code is claimed by any other person, it shall be retained by the custodian thereof until after the discharge or conviction of the person from whom it was taken and so long as it is required as evidence in any case in court. If such claimant establishes to the satisfaction of the court that he is the rightful owner, the money or property shall be restored to him, otherwise it shall be returned to the accused person, personally, and not to any attorney, agent, factor, or clerk of such accused person, except upon special order of the mayor after all liens and claims in favor of the municipal corporation have first been discharged and satisfied.

§ 2929.21 Penalties for misdemeanor.

(A) Whoever is convicted of or pleads guilty to a misdemeanor other than a minor misdemeanor shall be imprisoned for a definite term or fined, or both, which term of imprisonment and fine shall be fixed by the court as provided in this section.

(E) The court may require a person who is convicted of or pleads guilty to a misdemeanor to make restitution for all or part of the property damage that is caused by his offense and for all or part of the value of the property that is the subject of any theft offense, as defined in division (K) of section 2913.01 of the Revised Code, that the person committed. If the court determines that the victim of the offense was sixty-five years of age or older or permanently

or totally disabled at the time of the commission of the offense, the court shall, regardless of whether or not the offender knew the age of victim, consider this fact in favor of imposing restitution, but this fact shall not control the decision of the court.

[MEDICAL ASSISTANCE FOR VICTIMS]

§ 2907.28 [Cost incurred in medical examination.]

Any cost incurred by a hospital or other emergency medical facility in conducting a medical examination of a victim of an offense under sections 2907.02 to 2907.06 or section 2907.12 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution shall be charged to and paid by the appropriate local government as follows:

(A) Cost incurred by a county facility shall be charged to and paid by the county;

(B) Cost incurred by a municipal facility shall be charged to and paid by the municipality;

(C) Cost incurred by a private facility shall be charged to and paid by the municipality in which the alleged offense was committed, or charged to and paid by the county, if committed within an unincorporated area. If separate counts of an offense or separate offenses under sections 2907.02 to 2907.06 or section 2907.12 of the Revised Code took place in more than one municipality or more than one unincorporated area, or both, the local governments shall share the cost of the examination.

HISTORY: 136 v S 144. Eff 8-27-75.

Not analogous to former RC § 2907.28 (GC § 12448-6; 117 v 821; Bureau of Code Revision, 10-1-53), repealed 134 v H 511, § 2, eff 1-1-74.

Research Aids

Medical examination of victims:

O-Jur3d: Crim L § 1905

CASE NOTES AND OAG

1. (1980) A private corporation which provides examinations of sexual assault victims at the emergency room center of a county hospital for the purpose of gathering evidence for possible prosecution, and which does not charge the hospital for such services, constitutes a "private facility" as that term is used in RC § 2907.28(C). Pursuant to RC § 2907.28(C), the costs incurred by this private facility are to be charged to the municipality wherein the alleged assault occurred, or to the county if the alleged assault was committed within an unincorporated area:

2. (1976) When the victim of an alleged sex offense undergoes a medical examination at a county or municipal emergency medical facility for the purpose of gathering physical evidence for a possible prosecution, RC § 2907.28 requires that the costs incurred in such examination are to be paid by the county or municipality operating the facility regardless of the subdivision in which the alleged offense was committed: OAG No.76-072.

§ 2907.29 [Hospital emergency services for victims.]

Every hospital of this state which offers organized emergency services shall provide that a physician is available on call twenty-four hours each day for the examination of persons reported to any law enforcement agency to be victims of sexual offenses cognizable as violations of sections 2907.02 to 2907.06 or section 2907.12 of the Revised Code. The physician shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the reported victim, or upon the request of the reported victim, examine such person for the purposes [purpose] of gathering physical evidence. The public health council shall establish procedures for gathering evidence under this section.

Each reported victim shall be informed of available venereal disease, pregnancy, medical, and psychiatric services.

Notwithstanding any other provision of law, a minor may consent to examination under this section. Such consent is not subject to disaffirmance because of minority, and consent of the parent, parents, or guardian of the minor is not required for such examination. However, the hospital shall give written notice to the parent, parents, or guardian of a minor that such an examination has taken place. The parent, parents, or guardian of a minor giving consent under this section are not liable for payment for any services provided under this section without their consent.

§ 2919.25 [Domestic violence.]

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) Whoever violates this section is guilty of domestic violence, a misdemeanor of the first degree. If the offender has previously been convicted of domestic violence, domestic violence is a felony of the fourth degree.

(D) As used in this section and section 2919.26 of the Revised Code:

(1) "Family or household member" means a spouse, a person living as a spouse, a former spouse, a parent, a child, or another person related by consanguinity or affinity, who is residing or has resided with the offender.

(2) "Person living as a spouse" means a person who is living with another in a common law marital relationship or who is otherwise cohabiting with another.

§ 2919.26 [Motion for temporary protection order; form.]

(A) Upon the filing of a complaint that alleges a violation of section 2919.25 of the Revised Code, the complainant may file, or, if in an emergency the complainant is unable to file, a person who made an arrest for the alleged violation under section 2935.03 of the Revised Code may file on behalf of the complainant, a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint.

(B) The motion shall be prepared on a form that is provided by the clerk of the court, which form shall be substantially as follows:

"MOTION FOR TEMPORARY PROTECTION ORDER"

..... Court
Name and address of court
State of Ohio
v. No.
Name of defendant

....., the complainant, in the Name of person above captioned case, moves the court to issue a temporary protection order containing terms designed to ensure the safety and protection of the complainant and other family or household members, in relation to the named defendant, pursuant to its authority to issue such an order under section 2919.26 of the Revised Code.

A complaint, a copy of which has been attached to this motion, has been filed in this court charging

the named defendant with knowingly causing or attempting to cause physical harm to a family or household member, or recklessly causing serious physical harm to a family or household member, which constitutes "domestic violence," a violation of section 2919.25 of the Revised Code.

I understand that I must appear before the court, at a time set by the court within twenty-four hours after the filing of this motion, for a hearing on the motion, and that any temporary protection order granted pursuant to this motion is a pretrial condition of release and is effective only until the disposition of the criminal proceeding arising out of the attached complaint, or the issuance of a civil protection order or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint, under section 3113.31 of the Revised Code.

.....
Signature of complainant
(or signature of the arresting officer who filed the motion on behalf of the complainant)

.....
Address of complainant (or office address of the arresting officer who filed the motion on behalf of the complainant)

(C) As soon as possible after the filing of a motion that requests the issuance of a temporary protection order, but not later than twenty-four hours after the filing of the motion, the court shall conduct a hearing to determine whether to issue the order. The person who requested the order shall appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the court finds that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender, the court may issue a temporary protection order, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant or family or household member, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or family or household member.

(D)(1) Upon the filing of a complaint that alleges a violation of section 2919.25 of the Revised Code, the court, upon its own motion, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender.

(2) If the court issues a temporary protection order under this section as an ex parte order, it shall, as soon as possible after the issuance of the order, but not later than twenty-four hours after its issuance, conduct a hearing to determine whether the order should remain in effect, be modified, or be

revoked. The hearing shall be conducted under the standards set forth in division (C) of this section.

(3) An order issued under this division shall contain only those terms authorized in orders issued under division (C) of this section.

(E) A temporary protection order that is issued as a pretrial condition of release under this section:

(1) Is in addition to, but shall not be construed as a part of, any bail set under Criminal Rule 46;

(2) Is effective only until the disposition of the criminal proceeding arising out of the complaint upon which it is based, or the issuance of a protection order or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint, under section 3113.31 of the Revised Code;

(3) Shall not be construed as a finding that the alleged offender committed the alleged offense, and shall not be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

(F) A person who meets the criteria for bail under Criminal Rule 46 and who, if required to do so pursuant to that rule, executes or posts bond or deposits cash or securities as bail, shall not be held in custody pending a hearing before the court on a motion requesting a temporary protection order.

(G)(1) A copy of any temporary protection order that is issued under this section shall be issued by the court to the complainant, to the defendant, and to all law enforcement agencies that have jurisdiction to enforce the order. The court shall direct that a copy of the order be delivered to the defendant on the same day that the order is entered.

(2) All law enforcement agencies shall establish and maintain an index for the temporary protection orders delivered to the agencies pursuant to division (G)(1) of this section. With respect to each order delivered, each agency shall note on the index, the date and time of the receipt of the order by the agency.

(3) Any officer of a law enforcement agency shall enforce a temporary protection order in accordance with the provisions of the order, including removing the defendant from the premises.

(H) Upon a violation of a temporary protection order, the court may do one of the following:

(1) Hold the person who violates the order in contempt of court pursuant to Chapter 2705. of the Revised Code;

(2) Issue another temporary protection order, as a pretrial condition of release, that modifies the terms of the order that was violated.

HISTORY: 137 v H 835 (Eff 3-27-79); 138 v H 920, Eff 4-9-81.

Cross-References to Related Sections
Enforcement of orders by municipal police force, RC § 737.11.
Ohio Rules
Temporary restraining order, CivR 65(A).

* * *

[PROBATION CONDITIONED
UPON TREATMENT]**§ 2933.16** [Treatment as condition of probation after conviction of certain domestic offenses.]

Without limiting any other power of the court to grant or revoke probation, if an offender is convicted of, or pleads guilty to, a violation of division (B) of section 2919.22, or section 2919.25 of the Revised Code, the court may suspend execution of sentence and place the offender on probation conditioned upon the participation of the offender, to the satisfaction of the court, in a program of clinically appropriate psychiatric or psychological treatment.

* * *

§ 2935.03 [Officer's power to arrest without warrant; pursuit outside jurisdiction.]

(A) A sheriff, deputy sheriff, marshal, deputy marshal, police officer, or state university law enforcement officer appointed under section 3345.04 of the Revised Code shall arrest and detain until a warrant can be obtained a person found violating, within the limits of the political subdivision, college, or university in which the peace officer is appointed or elected, a law of this state or an ordinance of a municipal corporation.

(B) When there is reasonable ground to believe that an offense of violence, the offense of domestic violence as defined in section 2919.25 of the Revised Code, a theft offense as defined in section 2913.01 of the Revised Code, or a felony drug abuse offense as defined in section 2925.01 of the Revised Code, has been committed within the limits of the political subdivision, college, or university in which the peace officer is appointed or elected, a sheriff, deputy sheriff, marshal, deputy marshal, police officer, or state university law enforcement officer appointed under section 3345.04 of the Revised Code may arrest and detain until a warrant can be obtained any person whom [who] he has reasonable cause to believe is guilty of the violation. For purposes of this division, the execution of a written statement by a person alleging that an alleged offender has committed the offense of domestic violence against the person or against a child of the person, constitutes reasonable ground to believe that the offense was committed and reasonable cause to believe that the person alleged to have committed the offense is guilty of the violation.

* * *

§ 3113.31 [Definitions, jurisdiction, petition, hearing, orders.]

(A) As used in this section:

(1) "Domestic violence" means the occurrence of one or more of the following acts between family or household members who reside together or have resided together:

(a) Attempting to cause or recklessly causing bodily injury;

(b) Placing another person by the threat of force in fear of imminent serious physical harm;

(c) Committing any act with respect to a child that would result in the child being an abused child,

as defined in section 2151.031 [2151.03.1] of the Revised Code.

(2) "Court" means the domestic relations division of the court of common pleas in counties that have a domestic relations division, and the court of common pleas in counties that do not have a domestic relations division.

(3) "Family or household members" means spouses, persons living as spouses, former spouses, parents, children, or other persons related by consanguinity or affinity.

(4) "Persons living as spouses" means persons who are living together in a common law marital relationship or who are otherwise cohabiting with each other.

(B) The court has jurisdiction over all proceedings under this section. The petitioner's right to relief under this section is not affected by his leaving the residence or household to avoid further domestic violence.

(C) A person may seek relief under this section for himself, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state:

(1) An allegation that the respondent engaged in domestic violence against a family or household member of the respondent, including a description of the nature and extent of the domestic violence;

(2) The relationship of the respondent to the petitioner, and to the victim if other than the petitioner;

(3) A request for relief under this section.

(D) If a person who files a petition pursuant to this section requests an ex parte order, the court shall hold an ex parte hearing on the same day that the petition is filed. The court may, for good cause shown at the ex parte hearing, enter any temporary orders, with or without bond, including, but not limited to, an order described in division (E)(1)(a), (b), or (c) of this section, that the court finds

necessary to protect the family or household member from domestic violence. Immediate and present danger of domestic violence to the family or household member constitutes good cause for purposes of this section. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the family or household member with bodily harm or in which the respondent has previously engaged in domestic violence against the family or household member.

If the court, after an ex parte hearing, issues an order described in division (E)(1)(b) or (c) of this section, the court shall schedule a full hearing that shall be held within seven court days after the ex parte hearing. If any other type of protection order that is authorized under division (E) of this section is issued by the court after an ex parte hearing, the full hearing shall be held within ten days after the ex parte hearing. The respondent shall be given notice of, and an opportunity to be heard at, the full hearing.

If a person who files a petition pursuant to this section does not request an ex parte order, or if a person requests an ex parte order but the court does not issue an ex parte order after an ex parte hearing, the court shall proceed as in a normal civil action and grant a full hearing on the matter.

(E)(1) After an ex parte or full hearing, the court may grant any protection order, with or without bond, or approve any consent agreement to bring about a cessation of domestic violence against the family or household members. The order or agreement may:

(a) Direct the respondent to refrain from abusing the family or household members;

(b) Grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by evicting the respondent, when the residence or household is owned or leased solely by the petitioner or other family or household member, or by ordering the respondent to vacate the premises, when the residence or household is jointly owned or leased by the respondent, and the petitioner or other family or household member;

(c) When the respondent has a duty to support the petitioner or other family or household member living in the residence or household and the respondent is the sole owner or lessee of the residence or household, grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by ordering the respondent to vacate the premises, or, in the case of a consent agreement, allow the respondent to provide suitable, alternate housing;

(d) Award temporary custody of, or establish temporary visitation rights with regard to, minor children, if no other court has determined, or is determining, custody or visitation rights;

(e) Require the respondent to maintain support, if the respondent customarily provides for or contributes to the support of the family or household member, or if the respondent has a duty to support the petitioner or family or household member;

(f) Require the respondent, petitioner, victim of domestic violence, or any combination of those persons, to seek counseling;

(g) Require the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member;

(h) Grant other relief that the court considers equitable and fair, including, but not limited to, ordering the respondent to permit the use of a motor vehicle by the petitioner or other family or household member and the apportionment of household and family personal property.

(2) If a protection order has been issued pursuant to this section in a prior action involving the respondent and the petitioner or one or more of the family or household members, the court may include in a protection order that it issues a prohibition against the respondent returning to the residence or household and a prohibition against the petitioner inviting or admitting the respondent to the residence or household while the order is in effect.

(3) Any protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. Any order under division (E)(1)(d) or (e) of this section shall terminate no later than sixty days after the filing of an action for divorce, dissolution, or separate maintenance by the petitioner or respondent.

(4) No order or agreement under this section shall in any manner affect title to any real property.

(F)(1) A copy of any protection order, or consent agreement, that is issued or approved under this section shall be issued by the court to the petitioner, to the respondent, and to all law enforcement agencies that have jurisdiction to enforce the order or agreement. The court shall direct that a copy of an order be delivered to the respondent on the same day that the order is entered.

(2) All law enforcement agencies shall establish and maintain an index for the protection orders and the approved consent agreements delivered to the agencies pursuant to division (F)(1) of this section. With respect to each order and consent agreement delivered, each agency shall note on the index, the date and time of the receipt of the order or consent agreement by the agency.

(3) Any officer of a law enforcement agency shall enforce a protection order or consent agreement in accordance with the provisions of the order or agreement, including removing the respondent from the premises, where appropriate.

(G) Any proceeding under this section shall be conducted in accordance with the Civil Rules, except that an order under this section may be obtained with or without bond. The remedies and procedures provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies.

(H) Upon violation of a protection order or a court approved consent agreement, the court may hold the person who violates the order or agreement in contempt of court pursuant to Chapter 2705. of the Revised Code.

(I) The filing of proceedings under this section does not excuse a person from filing any report or giving any notice required by section 2151.421 [2151.42.1] of the Revised Code or by any other law. When a petition under this section alleges domestic violence against minor children, the court shall report the fact, or cause reports to be made, to a county, township, or municipal peace officer under section 2151.421 [2151.42.1] of the Revised Code.

(J) Any law enforcement agency that investigates a domestic dispute shall provide information to the family or household members involved regarding the relief available under this section and section 2919.26 of the Revised Code.

*HISTORY: 138 v H 920. Eff 4-9-81.

Law Review

The Battered Wife - the Legal System Attempts to Help. Note. 48 CinLRev 419 (1979).

Ohio's domestic violence law. Sarah H. Ramsey. 8 ONorthLRev 895.

Ohio's new civil remedies for victims of domestic violence. Hon. June R. Galvin. 8 ONorthLRev 248 (1981).

Spouse battering and Ohio's domestic violence legislation. Comment. 13 ToledoLRev 347 (1982).

§ 3113.32 †Repealed, 137 v H 835, § 3 [137 v H 835]. Eff 3-27-83.

†For section 3113.32 in effect until 3-27-83, see the bound volume.

§ 3113.33 [Definitions.]

As used in sections 3113.33 to 3113.39 of the Revised Code:

(A) "Domestic violence" means attempting to cause or causing bodily injury to a family or household member, or placing a family or household member by threat of force in fear of imminent physical harm.

(B) "Family or household member" means a spouse, a person living as a spouse, a former spouse, a parent, or another adult person related by consanguinity or affinity, who is residing or has resided with the person committing the domestic violence, and the dependents of those persons.

(C) "Shelter for victims of domestic violence" or "shelter" means a facility that provides temporary residential service or facilities to family or household members who are victims of domestic violence.

(D) "Person living as a spouse" means a person who is living with another in a common law marital relationship or who is otherwise cohabitating with another.

§ 3113.34 [Additional fee for marriage license; fees to assist shelters for domestic violence victims.]

In addition to any fee established under section 2101.16 of the Revised Code for the issuance of a marriage license, the probate court shall collect and deposit in the county treasury a fee of ten dollars for each marriage license issued. This fee shall be retained in a special fund and shall be expended only to provide financial assistance to shelters for victims of domestic violence, and only as provided in sections 3113.35 to 3113.39 of the Revised Code.

§ 3113.35 [Shelter may apply to county commissioners for release of funds; notice of eligibility; payments.]

(A) A shelter for victims of domestic violence may apply to the board of county commissioners of the county in which it is located or of an adjoining county, the population of which is or will be served by the shelter, for the release of funds collected during the calendar year in which application is made pursuant to section 3113.34 of the Revised Code to be used for the funding of the shelter during the calendar year following the year in which application is made. All applications for funds shall be submitted by the first day of October of the year preceding the calendar year for which the funding is desired, and shall include all of the following:

- (1) Evidence that the shelter is incorporated in this state as a nonprofit corporation;
- (2) A list of the trustees of the corporation, and a list of the trustees of the shelter, if different;
- (3) The proposed budget of the shelter for the following calendar year;
- (4) A summary of the services proposed to be offered in the following calendar year;
- (5) An estimate of the number of persons to be served during the following calendar year.

(B) Upon receipt of an application for funds from a shelter that meets the criteria set forth in section 3113.36 of the Revised Code, the board of county commissioners shall, on or before the fifteenth day of November of the year in which the application is filed, notify the shelter, in writing, whether it is eligible for funds, and if the shelter is eligible, estimate the amount available for that shelter from the fees collected under section 3113.34 of the Revised Code during the calendar year in which application is made.

(C) Funds allocated to shelters under this section shall be paid to the shelters twice annually, on the fifteenth day of January and on the fifteenth day of July of the year following the year in which the application is filed.

§ 3113.36 [Requirements for qualifying for funds; disqualification.]

(A) To qualify for funds under section 3113.35 of the Revised Code, a shelter for victims of domestic violence shall meet all of the following requirements:

- (1) Be incorporated in this state as a nonprofit corporation;
- (2) Have trustees who represent the racial, ethnic, and socioeconomic diversity of the community to be served, including at least one person who is or has been a victim of domestic violence;
- (3) Receive at least twenty-five per cent of its funds from sources other than funds distributed pursuant to section 3113.35 of the Revised Code. These other sources may be public or private, and may include funds distributed pursuant to section 3113.37 of the Revised Code, and contributions of goods or services, including materials, commodities, transportation, office space, or other types of facilities or personal services.
- (4) Provide residential service or facilities for children when accompanied by a parent, guardian, or custodian who is a victim of domestic violence and who is receiving temporary residential service at the shelter;
- (5) Require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter.

(B) A shelter for victims of domestic violence does not qualify for funds if it discriminates in its admissions or provision of services on the basis of race, religion, color, age, marital status, national origin, or ancestry. A shelter does not qualify for funds in the second half of any year if its application projects the provision of residential service and such service has not been provided in the first half of that year; such a shelter does not qualify for funds in the following year.

§ 3113.37 [Deposit of unallocated funds in special account; shelter may apply to attorney general for funds.]

(A) If in any calendar year a board of county commissioners does not allocate all of the funds collected that year under section 3113.34 of the Revised Code to a shelter for victims of domestic violence that applied for them, or if a board receives no application in that year from a shelter that is qualified to receive funds as determined under section 3113.36 of the Revised Code, the funds shall be deposited, on or before the thirty-first day of December of that year, in a special account to be administered by the attorney general for the purpose of providing financial assistance to shelters.

(B) A shelter located in this state may apply to the attorney general for funds. All applications for funds shall be submitted by the first day of February of the year for which the funds are requested, and shall contain all of the information set forth in division (A) of section 3113.35 of the Revised Code.

(C) Upon receipt of an application for funds from a shelter that meets the criteria set forth in section 3113.36 of the Revised Code, the attorney general shall, on or before the fifteenth day of March of the year in which the application is received, notify the shelter, in writing, whether it is eligible for funds, and, if the shelter is eligible, specify the amount available for that shelter.

(D) Funds allocated under this section shall be paid once annually, on or before the thirtieth day of April of the year in which the application is received.

HISTORY: 138 v S 46. Eff 1-18-80.

Cross-References to Related Sections

See RC §§ 3113.36, 3113.39 which refer to this section.

§ 3113.38 [Priorities for allocating funds.]

If a board of county commissioners or the attorney general receives applications from more than one qualified shelter for victims of domestic violence, and the requests for funds exceed the amount of funds available, funds shall be allocated on the basis of the following priorities:

- (A) To shelters in existence on the effective date of this section;
- (B) To shelters offering or proposing to offer the broadest range of services and referrals to the community served, including medical, psychological, financial, educational, vocational, child care services, and legal services;
- (C) To other qualified shelters.

OHIO

§ 3113.39 [Annual report by shelter; attorney general to compile reports.]

(A) A shelter for victims of domestic violence that receives funds pursuant to section 3113.35 or 3113.37 of the Revised Code shall file an annual report with the board of county commissioners of the county in which it is located and of the county from which it is receiving funds, if different, and with the attorney general on or before the thirty-first day of March of the year following the year in which funds were received. The annual report shall include statistics on the number of persons served by the shelter, the relationship of the victim of domestic violence to the abuser, the number of referrals made for medical, psychological, financial, educational, vocational, child care services, or legal services, and shall include the results of an independent audit. No information contained in the report shall identify any person served by the shelter, or enable any person to determine the identity of any such person.

(B) The attorney general shall compile the reports filed pursuant to division (A) of this section annually.

§ 3113.99 Penalties.

Whoever violates section 3113.06 of the Revised Code is guilty of a felony of the fourth degree.

* * *

§ 2921.22 [Failure to report a crime or knowledge of a death.]

(A) No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.

(B) No physician, limited practitioner, nurse, or person giving aid to a sick or injured person, shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by him, any serious physical harm to persons that he knows or has reasonable cause to believe resulted from an offense of violence, any second or third degree burn that was inflicted by an explosion or other incendiary device, or any burn that shows evidence of having been inflicted in a violent, malicious, or criminal manner.

(C) No person who discovers the body or acquires

the first knowledge of the death of any person shall fail to report the death immediately to any physician whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, ambulance service, emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained.

(D) No person shall fail to provide upon request of the person to whom he has made a report required by division (C) of this section, or to any law enforcement officer who has reasonable cause to assert the authority to investigate the circumstances surrounding the death, any facts within his knowledge that may have a bearing on the investigation of the death.

(E) Division (A) or (D) of this section does not require disclosure of information, when any of the following applies:

(6) Disclosure would amount to revealing information acquired by the actor in the course of his duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of section 2907.02, 2907.05, or 2907.12 of the Revised Code. As used in this division, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide such services.

(F) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

Category	Citation
1. Victim Compensation Program	21-142.1 et seq.
1.1 Responsible Agency	21-142.4
1.2 Eligible Claimants	21-142.3(3), 21-142.10(A)(2),(3)
1.3 Losses Covered	21-142.3(9)
1.4 Minimum and Maximum Award	21-142.13(A),(B)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	21-142.10(A)(4)
1.7 Filing of Claim - Time Limit	21-142.10(A)(1)
1.8 Emergency Award	
1.9 Funding	21-142.17 et seq.
2. Restitution	
2.1 Sentencing Option	22-991a(A)(1)(a), 22-991f
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	See, 22-991d (supervision fees imposed on probationers and parolees)
3. Escrow and Forfeiture of Offender Profits	22-17
4. Witness Fees	22-718; 28-81, 28-82
5. Victim's Bill of Rights	19-215:33
6. Protection from Intimidation	
6.1 Crime Defined	21-455
6.2 Protective Orders	19-215.33(2)
7. Victim Notification	
7.1 of Compensation Program	21-142.6(7); 19-215.33(3)
7.2 of Witness Fees	19-215.33(4)
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	19-215.33(1)
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	57-332.2 (notice to DA's of parole board docket)
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	22-982
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	19-215.33(7)
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	19-215.33(6); 22-1321 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	19-215.33
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	19-215.33(3) (right to notice of victim/witness services)
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	21-142.19 et seq.
13.2 Special Programs	22-40 et seq. (notice of rights and victim hotline to sexual assault victims)
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	See, 22-40 et seq. (notice of rights and victim hotline to domestic abuse victims)
14.1 Protective Orders	22-60 et seq.
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	21-142.6(5)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

OKLAHOMA

Oklahoma Statutes Annotated

Title 21

CRIME VICTIMS COMPENSATION ACT

Law Review Commentaries

Criminal injustice system:

Overview of Oklahoma victims' bill of rights. 17 Tulsa L.J. 253 (1981).

Overview of Oklahoma 'victim bill of rights' legislation. Michael C. Turpen. 53 Okl.B.J. 2205 (1982).
1981 Oklahoma Crime Victims Compensation Act. 17 Tulsa L.J. 260 (1981).

§ 142.1. Intent of Legislature

It is the intent of the Legislature to provide a method of compensating and assisting those persons within the state who are victims of criminal acts and who suffer bodily injury or death. To this end, it is the further intent of the Legislature to provide compensation in the amount of expenses actually incurred as a direct result of the criminal acts of other persons.

Laws 1981, c. 93, § 1.

Historical Note

Section 19 of Laws 1981, c. 93 provides for severability; § 20 directs codification; and § 21 provides that this act shall become effective October 1, 1981.

Title of Act:

An Act relating to crimes and punishments; providing for the Oklahoma Crime Victims Compensation Act; stating legislative intent; providing short title; defining terms; creating a crime victims compensation board, procedures relating to their appointment, terms, compensation, powers and duties; requiring provision for office, support, staff and secretarial services by the district attorneys training coordination council; authorizing awards for compensation for economic loss under certain circumstances to qualified applicants; limiting awards under certain circum-

stances; restricting board authority as to claimant and possible collateral source benefits; providing hearing procedures; providing for medical examination requirements including limited waiver of physician-patient privilege; authorizing award without requirement of prosecution or conviction of any individual; providing procedures for subrogation rights; providing for special types awards procedures; providing for annual reports and their distribution; prohibiting filing of false claim with penalty therefor; creating the crime victims compensation revolving fund and procedures for expenditures; providing schedule of payments to the fund by certain persons; providing severability; directing codification; and providing an effective date. Laws 1981, c. 93.

Library References

Criminal Law ¶1220.
C.J.S. Criminal Law § 2007.

OKLAHOMA

§ 142.2. Short title

This act shall be known and may be cited as the "Oklahoma Crime Victims Compensation Act".
Laws 1981, c. 93, § 2.

§ 142.3. Definitions

As used in this act:

1. "Allowance expense" means charges incurred for needed products, services and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training and other remedial treatment and care. It also includes a total charge not in excess of Seven Hundred Fifty Dollars (\$750.00) for expenses related to funeral, cremation or burial;
2. "Board" means the Crime Victims Compensation Board created by Section 4 of this act;¹
3. "Claimant" means any of the following persons applying for compensation under this act:
 - a. a victim,
 - b. a dependent of a victim who has died because of criminally injurious conduct, or
 - c. a person authorized to act on behalf of any of the persons enumerated in subparagraphs a and b of this paragraph;
4. "Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this act which the claimant has received, or which is readily available to the claimant, from any one or more of the following:
 - a. the offender,
 - b. the government of the United States or any agency thereof, in the form of benefits, such as social security, medicare and medicaid, a state or any of its political subdivisions or an instrumentality or two or more states, unless the law providing for the benefits or advantages makes them excessive or secondary to benefits under this act,
 - c. state-required temporary nonoccupational disability insurance,
 - d. workers' compensation,
 - e. wage continuation programs of any employer,
 - f. proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, or

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g. a contract providing prepaid hospital and other health care services or benefits for disability;

5. "Criminally injurious conduct" means an act which occurs or is attempted in this state that results in personal injury or death to a victim which is punishable by fine, imprisonment or death. Such term shall not include acts arising out of the negligent maintenance or use of a motor vehicle;

6. "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 the death of the victim where the death occurred as a result of criminally injurious conduct;

7. "Economic loss of a dependent" means loss after death of the victim of contributions of things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim;

8. "Replacement services loss of dependent" means the loss reasonably incurred by dependents after death of the victim in obtaining ordinary and necessary services in lieu of those the deceased victim would have performed for their benefit had the deceased victim not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim and not subtracted in calculating the economic loss of the dependent;

9. "Economic loss" means monetary detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, economic loss and replacement services loss of a dependent, but shall not include noneconomic loss;

10. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage;

11. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for the benefit of self or family; if the victim had not been injured or died;

12. "Work loss" means loss of income from work the victim would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake; and

13. "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct.

Laws 1981, c. 93, § 3.
¹ Section 142.4 of this title.

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§ 142.4. Crime Victims Compensation Board—Membership—Qualifications—Term—Vacancies—Officers—Expenses

A. There is hereby created a Crime Victims Compensation Board, consisting of three (3) members appointed by the Governor with the advice and consent of the Senate to serve four-year terms and until the successor is appointed and qualified. At least one member of the Board shall be a person admitted to practice law in this state. Of the first members appointed, one shall be appointed for a term of two (2) years, one shall be appointed for a term of three (3) years, and one shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner as regular appointments.

B. Each year the Board shall elect the chairman from its membership. Members of the Board shall receive such compensation, subsistence allowances, mileage and expenses as are provided by the State Travel Reimbursement Act.¹

¹ Section 500.1 et seq. of title 74.

Library References

Criminal Law ¶1220.
C.J.S. Criminal Law § 2007.

§ 142.5. Powers of Board relating to claims for compensation—Office and staff support

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

B. The Board shall hear and determine all matters relating to claims for compensation, including the power to reinvestigate or reopen claims without regard to statutes of limitation.

C. The Board shall have the power to subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence.

D. The Board shall be provided such office, support, staff and secretarial services as necessary by the District Attorneys Training Coordination Council.

Laws 1981, c. 93, § 5.

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Law Review Commentaries

Criminal justice system: Overview of Oklahoma "victim bill of rights" legislation. Michael C. Turpen. 53 Okl.B.J. 2205 (1982).

Library References

Criminal Law ¶1220.
C.J.S. Criminal Law § 2007.

§ 142.6. Additional powers of Board

In addition to any other powers and duties specified elsewhere in this act, the Board may:

1. Regulate its own procedures except as otherwise provided in this act;
2. Adopt rules and regulations to implement the provisions of this act;
3. Define any term not defined in this act;
4. Prescribe forms necessary to carry out the purposes of this act;
5. Request access to any reports of investigations or other data necessary to assist the Board in making a determination of eligibility for compensation under the provisions of this act;
6. Take judicial notice of general, technical and scientific facts within their specialized knowledge; and
7. Publicize the availability of compensation and information regarding the filing of claims therefor.

Laws 1981, c. 93, § 6.

Library References

Criminal Law ¶1220.
C.J.S. Criminal Law § 2007.

§ 142.7. Collateral source contributions not required of claimant

The Board shall not require any claimant to seek or accept any collateral source contribution, unless the claimant was receiving such benefits prior to the occurrence giving rise to the claim under the provisions of this act.

Laws 1981, c. 93, § 7.

§ 142.8. Parties—Right to appear—Hearing—Notice—Settlement of claim

A. Every party to the claim shall be afforded an opportunity to appear and be heard and to offer evidence and argument on any

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issue relevant to the claim, and to examine witnesses and offer evidence in reply to any matter of an evidentiary nature in the record relevant to the claim.

B. In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice pursuant to regulations promulgated by the Board. A record of the proceedings of the hearing in a contested case shall be made and shall be transcribed upon request of any party, who shall pay transcription costs unless otherwise ordered by the Board.

C. The Board may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.
Laws 1981, c. 93, § 8.

Library References

Criminal Law §1220.
C.J.S. Criminal Law § 2007.

§ 142.9. Waiver of privilege—Mental or physical examination—Autopsy—Report

A. Any person filing a claim under the provisions of this act shall be deemed to have waived any physician-patient privilege as to communications or records relevant to an issue of the physical, mental or emotional conditions of the claimant.

B. If the mental, physical or emotional condition of a claimant is material to a claim, the Board upon good cause shown may order the claimant to submit to a mental or physical examination and may order an autopsy of a deceased victim. 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. The order shall also require the person to file with the Board a detailed written report of the examination or autopsy. The report shall set out the findings of the person making the report, including results of all tests made, diagnoses, prognoses and other conclusions and reports of earlier examinations of the same conditions.

C. The Board shall furnish a copy of the report examined. If the victim is deceased, the Board, on request, shall furnish a copy of the report to the claimant.

D. The Board may require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.
Laws 1981, c. 93, § 9.

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Library References

Criminal Law §1220.
C.J.S. Criminal Law § 2007.

§ 142.10. Award of compensation—Criteria—Amount—Denial, withdrawal or reduction—Reconsideration

A. Compensation shall not be awarded:

1. Unless the claim has been filed with the Board within one (1) year after the injury or death upon which the claim is based;

2. To a claimant who was the offender, or an accomplice of the offender;

3. To another person if the award would unjustly benefit the offender or accomplice; or

4. Unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within seventy-two (72) hours after its occurrence or the Board finds there was good cause for the failure to report within that time.

B. Compensation otherwise payable to a claimant shall be diminished to the extent:

1. That the economic loss is recouped from collateral sources; or

2. Of the degree of responsibility for the cause of the injury or death attributable to the victim as determined by the Board.

C. The Board, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies, may deny, withdraw or reduce an award of compensation.

D. The Board, on its own motion or on request of the claimant, may reconsider a decision granting or denying an award or determining its amount. An order on reconsideration of an award shall not require a refund of amounts previously paid, unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a Board decision for the purpose of judicial review.

Laws 1981, c. 93, § 10.

Law Review Commentaries

Criminal justice system: Overview of Oklahoma 'victim bill of rights' legislation. Michael C. Turpen. 53 Okl.B.J. 2205 (1982).

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Library References

Criminal Law ⇐ 1220.
C.J.S. Criminal Law § 2007.

§ 142.11. Prosecution or conviction not required—Proof of conviction—Suspension of proceedings

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. 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 13 of this act.¹

Laws 1981, c. 93, § 11.

¹ Section 142.13 of this title.

Library References

Criminal Law ⇐ 1220.
C.J.S. Criminal Law § 2007.

§ 142.12. Recovery from collateral source—Subrogation of state—Retention of funds in trust—Notice to Board

A. If compensation is awarded, the state shall be subrogated to all the rights of a claimant to receive or recover from a collateral source to the extent that compensation was awarded.

B. In the event the claimant recovers compensation, other than under the provisions of this act, for injuries or death resulting from criminally injurious conduct, the claimant shall retain, as trustee, so much of the recovered funds as necessary to reimburse the Victims Compensation Revolving Fund to the extent that compensation was awarded to the claimant from that Fund. The funds retained in trust shall be promptly deposited in the Victims Compensation Revolving Fund.

C. If a claimant brings an action to recover damages related to the criminally injurious conduct upon which compensation is claimed or awarded, the claimant shall give the Board written notice of the action. After receiving the notice, the Board may join in the action as a party plaintiff to recover the compensation awarded.

Laws 1981, c. 93, § 12.

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Library References

Criminal Law ⇐ 1220.
C.J.S. Criminal Law § 2007.

§ 142.13. Payment of award—Exemption from process—Assignment

A. Compensation for work loss, replacement services loss, dependent's economic loss and dependent's replacement service loss may not exceed Two Hundred Dollars (\$200.00) per week.

B. Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed Ten Thousand Dollars (\$10,000.00) in the aggregate.

C. The Board may provide for the payment to a claimant in a lump sum or in installments. At the request of the claimant, the Board may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board of either of the following:

1. That the award in a lump sum will promote the interests of the claimant; or

2. That the present value of all future economic loss, other than allowable expense, does not exceed One Thousand Dollars (\$1,000.00).

D. An award payable in installments for future economic loss may be made only for a period as to which the Board can reasonably determine future economic loss. An award payable in installments for future economic loss may be modified by the Board upon its findings that a material and substantial change of circumstances has occurred.

E. An award shall not be subject to execution, attachment, garnishment or other process, except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent that such creditor has provided products, services or accommodations, the costs of which are included in the award.

F. An assignment by the claimant to any future award under the provisions of this act is unenforceable, except:

1. An assignment of any award for work loss to assure payment of court ordered alimony, maintenance or child support; or

2. An assignment of any award 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.

Laws 1981, c. 93, § 13.

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Law Review Commentaries

Criminal injustice system: Overview of Oklahoma "victim bill of rights" legislation. Michael C. Turpen. 53 Okl.B.J. 2205 (1982).

Library References

Criminal Law ¶1220.
C.J.S. Criminal Law § 2007.

§ 142.14. Advancement on award

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

Laws 1981, c. 93, § 14.

Library References

Criminal Law ¶1220.
C.J.S. Criminal Law § 2007.

§ 142.15. Reports to be made by Board

The Board shall prepare and transmit annually to the Governor and the Speaker of the House of Representatives and the President Pro Tempore of the Senate, a report of its activities, including the amount of compensation awarded and a statistical summary of claims and awards made and denied.

Laws 1981, c. 93, § 15.

§ 142.16. False claims

The filing of a false claim for compensation pursuant to this act shall constitute a misdemeanor, and shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

Laws 1981, c. 93, § 16.

§ 142.17. Crime Victims Compensation Revolving Fund

There is hereby created in the State Treasury a revolving fund for the Crime Victims Compensation Board to be designated the "Crime Victims Compensation Revolving Fund". The Fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Crime Victims Compensation Board from any source excluding appropriated funds. All monies

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accruing to the credit of said Fund are hereby appropriated and may be budgeted and expended by the Board for the purpose of implementing the provisions of the Oklahoma Crime Victims Compensation Act.¹ Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

Laws 1981, c. 93, § 17.

¹ Section 142.2 of this title.

Law Review Commentaries

Criminal injustice system: Overview of Oklahoma "victim bill of rights" legislation. Michael C. Turpen. 53 Okl.B.J. 2205 (1982).

Library References

Criminal Law ¶1220.
C.J.S. Criminal Law § 2007.

§ 142.18. Victims compensation assessments

A. In addition to the imposition of any costs, penalties or fines imposed pursuant to law, any person convicted or pleading guilty to a felony involving criminally injurious conduct shall be ordered to pay a victim compensation assessment of at least Twenty-five Dollars (\$25.00), but not to exceed Ten Thousand Dollars (\$10,000.00), for each crime for which he was convicted. In imposing this penalty, the court shall consider factors such as the severity of the crime, the prior criminal record, and the ability of the defendant to pay, as well as the economic impact of the victim compensation assessment on the dependents of the defendant.

B. In addition to the imposition of any costs, penalties or fines imposed pursuant to law, any person convicted or pleading guilty in a felony or misdemeanor offense, not including traffic offenses, not described in subsection A of this section, the court shall levy a victim compensation assessment of Twenty Dollars (\$20.00) for each felony and Five Dollars (\$5.00) for each misdemeanor upon every fine, penalty, and forfeiture imposed and collected. When a cash bond is posted for any offense included in this subsection, the bond shall also include a sufficient amount to cover the victim compensation assessment.

C. All monies collected pursuant to this section shall be forwarded quarterly by the court clerk to the Administrative Director of the Courts to be deposited in the Victims Compensation Revolving Fund.

Laws 1981, c. 93, § 18.

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Library References

Criminal Law ¶1220.
C.J.S. Criminal Law § 2007.

§ 142.19. Administration of Sexual Assault Examination Fund—Transfer

The duties of administering the Sexual Assault Examination Fund are hereby transferred from the Oklahoma State Bureau of Investigation to the Crime Victims Compensation Board. All unexpended funds, property, records and any outstanding financial obligations or encumbrances of the Oklahoma State Bureau of Investigation which relate to the Sexual Assault Examination Fund are hereby transferred to the Crime Victims Compensation Board. Laws 1982, c. 177, § 1, eff. April 16, 1982.

Historical Note

Section 3 of Laws 1982, c. 177 provides for codification and § 5 provides for severability.

Title of Act:

An Act relating to crimes and punishments; transferring duties, funds, property, records and obligations of administering the sexual assault examination fund from Oklahoma State Bureau of

Investigation to Crime Victims Compensation Board; establishing Sexual Assault Examination Fund; defining sexual assault; authorizing payment for examinations; directing codification; repealing 74 O.S.1981, section 150.20, which relates to administering the Sexual Assault Examination Fund by Oklahoma State Bureau of Investigation; providing for severability; and declaring an emergency. Laws 1982, c. 177.

§ 142.20. Sexual Assault Examination Fund—Establishment

A. A Sexual Assault Examination Fund shall be established for the purpose of providing to a victim of a sexual assault a free medical examination for the procurement of evidence to aid in the investigation and prosecution of a sexual assault offense.

B. The words "sexual assault" as used in this section mean:

1. Rape, or rape by instrumentation, as defined in Sections 1111, 1111.1 and 1114 of this title; or
2. Forcible sodomy, as defined in Section 888 of this title.

C. The Crime Victims Compensation Board is authorized to pay for this examination upon application submitted by the victim of a sexual assault and approved by the district attorney who has jurisdiction over the prosecution of the sexual assault offense. The Crime Victims Compensation Board shall establish the procedures for disbursement of the Sexual Assault Examination Fund.

Laws 1982, c. 177, § 2, eff. April 16, 1982.

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Title 22

§ 991a. Sentence—Powers of court

A. When a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

1. suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

- a. To provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty, or
- b. To reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum, or
- c. To engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted, or
- d. To pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by the convicted defendant to any victim of the criminal act for which said defendant was convicted, committed within the State of Oklahoma wherein such victim has incurred a financial loss, or
- e. To confinement in the county jail for a period not to exceed ninety (90) days.

However, any such order for restitution, community service or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence; or

2. impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section; or

3. commit such person for confinement provided for by law with or without restitution as provided for in this section.

B. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony.

§ 991d. Probation fee—Parole fee

A. A court granting probation shall fix a fee of Ten Dollars (\$10.00) per month to be paid by the probationer to the Department of Corrections during the probationary period, provided, however, that this mandatory fee will not pertain if, in the judgment of the court, such a fee would impose an unnecessary hardship on the probationer. In such hardship cases, the court shall expressly waive the fee. The court shall make payment of the fee a condition of granting or continuing the probation, and such condition shall be imposed whether the probation is incident to the suspending of execution of a sentence or incident to the suspending of imposition of a sentence or the deferring of proceedings after a verdict or plea of guilty, but such condition shall not be imposed unless probationary services are made available to the defendant.

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If restitution is ordered by the court, the probation fee will be paid in addition to the restitution so ordered. In addition to the restitution payment and probation fee, a fee of One Dollar (\$1.00) per payment is to be paid to the Department of Corrections to cover the expenses of administration of such restitution.

B. The Pardon and Parole Board shall fix a fee of Ten Dollars (\$10.00) per month to be paid by the parolee as a condition of parole. Such fee shall be paid to the Department of Corrections. The condition of the fee may not be imposed unless parole services are made available to the parolee. Provided, however, that this mandatory fee will not pertain if, in the judgment of the Pardon and Parole Board, such a fee would impose an unnecessary hardship on the parolee. In such hardship cases the Pardon and Parole Board shall expressly waive the fee.

Laws 1972, c. 121, § 1, emerg. eff. March 31, 1972. Amended by Laws 1976, c. 160, § 4, eff. Oct. 1, 1976; Laws 1978, c. 273, § 16, emerg. eff. May 10, 1978; Laws 1981, c. 58, § 1, operative July 1, 1981.

Approved April 13, 1981. Emergency.

Section 3 of Laws 1981, c. 58 provides that this act shall become operative July 1, 1981.

Title of Act:

An Act relating to criminal procedure; providing that court may make payment of certain fee a condition of probation; creating Probation and Parole Fund; providing for payment into fund of fees and appropriating same for expenses of supervising probationers; and declaring an emergency. Laws 1972, c. 121.

Law Review Commentaries

Judicial review: Due process in parole process. 32 Okl.L.Rev. 666 (1979).

Library References

Criminal Law § 982.5(1).
C.J.S. Criminal Law §§ 1571, 1618.

§ 991e. Disposition of fees—Statute of limitations

Beginning July 1, 1983, the fee provided for in Section 991d of this title shall be paid to the State Treasurer and credited to the Department of Corrections Revolving Fund. On July 1, 1983, any cash remaining in the Probation and Parole Fund in excess of allotment balances or encumbrances for the fiscal year ending June 30, 1983, shall be transferred to the Department of Corrections Revolving Fund and on November 15, 1983, all cash remaining in the Probation and Parole Fund shall be transferred to the Department of Corrections Revolving Fund. There shall be a three-year statute of limitation from the date of receipt of all restitution funds made payable to the Department of Corrections. All restitution funds which have not been disbursed at the end of this three-year period shall be transferred to the Victims Compensation Fund. This statute of limitation applies to funds currently on the books of the Department which have not been disbursed as of July 1, 1981. Future valid claims for funds transferred to the Victims Compensation Fund in accordance with the provisions of this section will be honored and paid from the Victims Compensation Fund.

Laws 1972, c. 121, § 2, emerg. eff. March 31, 1972. Amended by Laws 1981, c. 58, § 2, operative July 1, 1981; Laws 1983, c. 266, § 8, operative July 1, 1983.

§ 991f. Definitions

For the purposes of this act:

1. "Monetary restitution" shall mean the sum to be paid by the defendant to the victim of his criminal act to compensate that victim for the economic loss suffered as a direct result of the criminal act of the defender;

2. "Victim" means any person, partnership or corporation that suffers an economic loss as a direct result of the criminal act of another person; and

Notes of Decisions

1. Construction and application

The term "probation" as defined in § 991a of this title applies to this section and § 991e of this title. Accordingly, probation fees collection thereunder, are to be expended on claims properly approved by this Deputy Director, Division of Probation and Parole of the Department of Corrections, for paying the expenses of supervising probationers subject to the supervision of the Division of Probation and Parole of the Department of Corrections. Op. Atty. Gen. No. 74-114 (April 25, 1974).

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3. "Economic loss" means actual economic detriment suffered by the victim consisting of medical expenses actually incurred, damage to real and personal property and any other out-of-pocket expenses reasonably incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included.

Added by Laws 1976, c. 160, § 5, eff. Oct. 1, 1976.

Sections 6, 7, and 8 of Laws 1976, c. 160, provided for codification, effective date of October 1, 1976, and severability.

§ 17. Custody and distribution of proceeds from sale of rights arising from criminal act

A. Every person who has been charged, convicted, has pled guilty or has pled nolo contendere to any crime hereinafter referred to as defendant who contracts to reenact such crime by the use of any movie, book, newspaper, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of his thoughts, opinions or emotions regarding such crime, shall pay to the district court wherein the charges were filed any money or thing of value contracted to be paid to the defendant. The district court shall deposit such monies in an escrow account for the benefit of and payable to any victim or his legal representative of crimes committed by the defendant.

B. Payments from the account shall be made to the defendant upon an order of the judge of the district court wherein the charges were filed upon showing that the money or thing of value shall be used for the exclusive purpose of retaining legal representation for the defendant at any stage of the proceedings arising out of a criminal charge, and that the defendant would otherwise be unable to afford adequate representation.

C. Payments from the account shall be used to satisfy any judgment rendered in favor of a victim or his legal representative, provided said victim brings a civil action, in a court of competent jurisdiction, to recover money against the defendant or his legal representatives within five (5) years of the filing of the charges against the defendant. If no victim or legal representative of a victim has filed suit within five (5) years from the filing of the charges, any money remaining in the account shall be paid over to the Victims' Compensation Revolving Fund. Upon disposition of charges favorable to the defendant, money in the account shall be paid over to the defendant.

D. The district court wherein the charges were filed shall, once every six (6) months for five (5) years from the date the money is deposited with the court, publish a notice in at least one newspaper of general circulation in each county of the state in accordance with the provisions on publication of notices found in Sections 101 et seq. of Title 25 of the Oklahoma Statutes, notifying any eligible victim or legal representative of an eligible victim that monies are available to satisfy judgments pursuant to this section.

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§ 718. Witnesses subpoenaed by defendant—Fees—Payment—Witnesses from another state or county

A. All witnesses for a criminal defendant who appear pursuant to a subpoena issued on the behalf of the defendant shall be paid out of the court fund the fees and mileage prescribed by law. Upon conviction of the defendant, said fees and mileage shall be taxed as costs and collected as other costs in the case.

B. A witness who appears from another state to testify in this state in a criminal case or proceeding pursuant to a subpoena issued in accordance with the provisions of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings¹ shall be reimbursed from the court fund of the court where prosecution is pending for travel and expenses at rates not to exceed those prescribed by law for reimbursement of state employees traveling interstate. Upon conviction, such fees and mileage shall be taxed as costs and collected as other costs in the case.

C. A witness who appears from a county other than the county in which a criminal case or proceeding is being conducted pursuant to a subpoena shall be reimbursed from the court fund of the court where the prosecution is pending for travel and expenses at a rate not to exceed the rate of reimbursement specified in the State Travel Reimbursement Act² for state employees. Upon conviction of the defendant, said fees and mileage shall be taxed as costs and collected as other costs in the case.

Title 28

§ 81. Witness fees

Witnesses when subpoenaed shall receive the following fees: for attending any court, before any judge, or commissioner of courts of record, less than sixty (60) miles from his residence, per day, Five Dollars (\$5.00); for attending any court, before any judge, or commissioner of courts of record, more than sixty (60) miles from his residence, per day, Twelve Dollars (\$12.00); and for any witness each mile actually and necessarily traveled in going to and returning from the place of attendance, fifteen cents (\$0.15); provided, that no mileage shall be allowed where the distance is less than one (1) mile. No witness shall receive per diem or mileage in more than one case covering the same period of time, or the same travel, and each witness shall be required to make oath that the fees claimed have not been claimed or received in any other case, and no juror shall receive pay as a witness while serving as such juror. Amended by Laws 1977, c. 253, § 1, eff. Oct. 1, 1978.

§ 82. Witnesses for state—Fees and mileage—Taxation as costs upon conviction

All witnesses on behalf of the state appearing in obedience to a subpoena or order at any stage of a criminal case or proceeding and in any civil case or proceeding brought by the State of Oklahoma directly or on relation of the district attorney, or by the board of county commissioners on behalf of the county, shall be paid out of the court fund in such county the fees and mileage as provided in Section 81 of this title. Upon conviction, such fees and mileage shall be taxed as costs in the case and collected as other costs in the case.

Amended by Laws 1977, c. 253, § 2, eff. Oct. 1, 1978.

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Title 19

§ 215.33 Victims and witnesses services

The district attorney's office shall inform as far as practical that victims and witnesses of crimes have the following services subject to the discretion of the district attorney with the consent in writing of the presiding judge of the judicial district:

1. To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court;

2. To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

3. To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services;

4. To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled;

5. To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants;

6. To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person;

7. To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances; and

8. To have the family members of all homicide victims afforded all of the services under this section, whether or not they are witnesses in any criminal proceedings.

Added by Laws 1981, c. 219, § 2. Renumbered from § 215.15a by Laws 1982, c. 340, § 25, emerg. eff. June 2, 1982.

Section 3 of Laws 1981, c. 219 directs Library References
codification. District and Prosecuting Attorneys
C.J.S. District and Prosecuting Attorneys §§ 10, 14.

Title 21

§ 455. Preventing witness from giving testimony

Every person who willfully prevents any person from giving testimony who has been duly summoned or subpoenaed or endorsed on the criminal information as a witness or threatens physical or mental harm through force or fear with the intent to prevent the witness from appearing in court to give his testimony, or to alter his testimony, is guilty of a felony punishable by not less than one (1) year nor more than ten (10) years in prison.

R.L.1910, § 2230. Laws 1977, c. 158, § 1, eff. Oct. 1, 1977; Laws 1981, c. 92, § 1.

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Title 57

§ 332.2 Meetings of pardon and parole board—Notice of dockets and recommendations to district attorneys

The Pardon and Parole Board, which shall meet only on the call of the Chairman, is authorized, if and when an application made to the Governor for a reprieve, commutation, parole, pardon, or other act of clemency is certified thereto by the Governor, to examine into the merits of said application and make recommendations to the Governor in relation thereto, said recommendation being advisory to the Governor and not binding thereon.

The Pardon and Parole Board shall provide a copy of their regular docket to each district attorney in this state at least twenty (20) days before such docket is considered by the board, or in the case of a supplemental, addendum or special docket, at least ten (10) days before such docket is considered by the board, and shall notify the district attorney of any recommendations for commutations or paroles.

Title 22

§ 982. Presentence investigation

Whenever a person is convicted of a felony except when the death sentence is imposed, the court shall, before imposing sentence to commit any felon to incarceration by the Department of Corrections, order a presentence investigation to be made by the Division of Probation and Parole of the Department. The Division shall thereupon inquire into the circumstances of the offense. This information shall include the voluntary statement of the victim concerning the offense, the amount of the loss of the victim, and the criminal record, social history and present condition of the convicted person. The Division shall make a report of such investigation to the court, including a recommendation as to appropriate sentence, and specifically a recommendation for or against probation. Such reports must be presented to the judge so requesting, within a reasonable time, and upon the failure to so present the same, the judge may proceed with sentencing. Whenever, in the opinion of the court or the Division, it is desirable, the investigation shall include a physical and mental examination of the convicted person. The reports so received shall not be referred to, or be considered, in any appeal proceedings. Before imposing sentence, the court shall advise the defendant or his counsel and the district attorney of the factual contents and the conclusions of any presentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. If either the defendant or the district attorney desires, such hearing shall be ordered by the court providing either party an opportunity to offer evidence proving or disproving any finding contained in such report, which shall be a hearing in mitigation or aggravation of punishment.

If the district attorney and the defendant desire to waive such presentence investigation and report, both shall execute a suitable waiver subject to approval of the court, whereupon the judge shall proceed with the sentencing.

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STOLEN PROPERTY AND PROPERTY TAKEN FROM DEFENDANT

§ 1321. Stolen property to be held by officer

When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section¹ to direct the disposal thereof. R.L.1910, § 6127.

¹ Section 1322 of this title.

Historical Note

St.1890, § 5967; St.1893, § 5532; Origin: Comp.Laws Dak.1887, St.1903, § 5502; Comp.Laws 1909, § 7589. 7143; Comp.St.1921, § 2044.

Notes of Decisions

1. Construction and application

Where sheriff arrested murderer and took from him money of which he had robbed his victim, and at his direction paid same to his counsel, sheriff was liable with his bondsmen to administrator of deceased under section 292 of Title 58, Probate Pro-

cedure, notwithstanding this section, providing procedure for care and disposal of stolen or embezzled moneys when possessor is tried for that crime did not apply, accused being tried only for murder. Hodgson v. Hatfield, 111 Okl. 134, 240 P. 69 (1925).

§ 1322. Stolen property—Magistrate to order delivery, when

On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property. R.L. 1910, § 6128.

Historical Note

St.1890, § 5968; St.1893, § 5533; Origin: Comp.Laws Dak.1887, St.1903, § 5803; Comp.Laws 1909, § 7590. 7144; Comp.St.1921, § 2045.

§ 1323. Magistrate to deliver stolen property, when

If the property stolen or embezzled come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. R. L.1910, § 6129.

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Historical Note

St.1890, § 5969; St.1893, § 5534; Origin: Comp.Laws Dak.1887, St.1903, § 5804; Comp.Laws 1909, § 7591. 7145; Comp.St.1921, § 2946.

§ 1324. Trial court may deliver stolen property

If property stolen or embezzled have not been delivered to the owner, the court before which a trial is had for stealing or embezzling it, may, on proof of his title, order it to be restored to the owner. R.L.1910, § 6130.

Title 22

VICTIM OF RAPE, FORCIBLE SODOMY OR DOMESTIC ABUSE [NEW]

§ 40. Definitions

As used in Sections 1 through 5 of this act:

1. "Rape" means an act of sexual intercourse accomplished with a person pursuant to Sections 1111, 1111.1 and 1114 of Title 21 of the Oklahoma Statutes;
2. "Forcible sodomy" means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to Sections 886 and 887 of Title 21 of the Oklahoma Statutes;
3. "Domestic abuse" means the occurrence of one or more of the following acts between family or household members:
 - a. causing or attempting to cause physical harm; or
 - b. threatening another with physical harm; and
4. "Family or household members" means spouses, ex-spouses, parents, children, persons otherwise related by blood or marriage or persons living in the same household or who formerly shared the same residence. This shall include the elderly and handicapped.

Added by Laws 1982, c. 220, § 1.

¹ Sections 40 to 40.4 of this title.

Section 6 of Laws 1982, c. 220 directs codification and Section 7 provides for an effective date.

Title of Act:

An Act relating to criminal procedure; defining terms; requiring certain information be presented to certain victims; providing for a statement of certain rights to be presented to the victim of rape, forcible sodomy or domestic abuse; prohibiting certain acts; requir-

ing the state department of mental health to develop, maintain and operate a telephone service for certain persons; directing codification; and providing an effective date. Laws 1982, c. 220.

Library References

Rape \S 1.
Sequestration \S 1.
C.J.S. Rape \S 1 et seq.
C.J.S. Sequestration \S 1 to 3.

§ 40.1 Victim of rape or forcible sodomy—Notice of rights

Upon the preliminary investigation of any rape or forcible sodomy, it shall be the duty of the officer who interviews the victim of the rape or forcible sodomy to inform the victim of the twenty-four-hour statewide telephone communication service established by Section 5 of this act ¹ and

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to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of the crime of rape or forcible sodomy, you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;
2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available;
3. The right to be informed of financial assistance and other social services as a result of being a victim, including information on how to apply for the assistance and services; and
4. The right to a free medical examination for the procurement of evidence to aid in the prosecution of your assailant."

The written notice shall also include the telephone number of the twenty-four-hour telephone communication service established by Section 5 of this act.

Added by Laws 1982, c. 220, § 2.

¹ Section 40.4 of this title.

Library References

Criminal Law \S 1224(1).
C.J.S. Criminal Law \S 2008.

§ 40.2 Victim of domestic abuse—Notice of rights

Upon the preliminary investigation of any crime involving domestic abuse, it shall be the duty of the first peace officer who interviews the victim of the domestic abuse to inform the victim of the twenty-four-hour statewide telephone communication service established by Section 5 of this act ¹ and to give notice to the victim of certain rights. The notice shall consist of handing such victim the following statement:

"As a victim of domestic abuse, you have certain rights. These rights are as follows:

1. The right to request that charges be pressed against your assailant;
2. The right to request protection from any harm or threat of harm arising out of your cooperation with law enforcement and prosecution efforts as far as facilities are available and to be provided with information on the level of protection available; and
3. The right to be informed of financial assistance and other social services available as a result of being a victim, including information on how to apply for the assistance and services."

Added by Laws 1982, c. 220, § 3.

¹ Section 40.4 of this title.

Library References

Criminal Law \S 1222.
C.J.S. Criminal Law \S 2008 et seq.

§ 40.3 Victims not to be discouraged from pressing charges

A peace officer shall not discourage a victim of rape, forcible sodomy or domestic abuse from pressing charges against the assailant of the victim.

Added by Laws 1982, c. 220, § 4.

§ 40.4 Twenty-four-hour statewide telephone communication service—Purpose

The State Department of Mental Health shall be responsible for the development, maintenance and operation of a twenty-four-hour statewide telephone communication service for the victims of rape, forcible sodomy and domestic violence. The purpose of the service is to provide informa-

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tion to such victim regarding any immediate action which should be taken by the victim, the social services available, and the legal rights and remedies of the victim.
Added by Laws 1982, c. 220, § 5.
Library References
Criminal Law § 1222.
C.J.S. Criminal Law § 2008 et seq.

Title 22

PROTECTION FROM DOMESTIC ABUSE ACT

§ 60. Short title
This act shall be known and may be cited as the "Protection from Domestic Abuse Act".¹
Added by Laws 1982, c. 255, § 1.
¹ Sections 60 to 60.6 of this title.

Section 8 of Laws 1982, c. 255 directs codification and § 9 provides for an effective date.
Title of Act:
An Act relating to criminal procedure; providing short title; defining terms; providing for the issuance of protective orders for victims of domestic abuse; providing for filing of petitions; providing form of petition; prohibiting filing fee; providing for hearings; providing procedures; providing for extension of protective orders; requiring certain duties of court clerk, victim-witness coordinator and law enforcement agencies; providing penalties; directing codification; and providing an effective date. Laws 1982, c. 255.

Law Review Commentaries
Criminal injustice system: Overview of Oklahoma victims' bill of rights. 17 Tulsa L.J. 253 (1981).
1981 Oklahoma Crime Victim Compensation Act. 17 Tulsa L.J. 260 (1981).

Notes of Decisions

1. Validity
Section 60 et seq. of this title does not violate the prohibitions imposed by Const. Art. 5, § 57. Op.Atty.Gen. No. 82-249 (Sept. 17, 1982).

§ 60.1. Definitions
As used in this act:
1. "Domestic abuse" means the occurrence of one or more of the following acts between family or household members:
a. causing or attempting to cause serious physical harm, or
b. threatening another with imminent serious physical harm; and
2. "Family or household members" means spouses, ex-spouses, parents, children, persons otherwise related by blood or marriage, or persons living in the same household or who formerly lived in the same household. This shall include the elderly and handicapped.
Added by Laws 1982, c. 255, § 2.

Library References
Assault and Battery § 48.
C.J.S. Assault and Battery §§ 2, 3, 62, 64 to 66, 81.

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§ 60.2. Protective order—Petition: form; filing fee; preparation

A. A victim of domestic abuse, or any adult household member on behalf of any other family or household member who is a minor or incompetent, may seek relief under the provisions of this act by filing a petition for protective order with the district court of the county in which the victim resides.
B. The petition forms shall be provided by the clerk of the court and shall be in substantially the following form:

IN THE DISTRICT COURT IN AND FOR _____ COUNTY
STATE OF OKLAHOMA

vs. Plaintiff

Defendant } Case No. _____

PETITION FOR PROTECTIVE ORDER

Plaintiff, being sworn, states:
1. (Check one or more)
☐ The defendant caused or attempted to cause serious physical harm to _____
☐ The defendant threatened _____ with imminent serious physical harm.
2. The incident causing the filing of this petition occurred on or about _____ (date)
(Describe what happened:)

3. The victim and the defendant are related as follows:
(check one)
☐ married
☐ divorced
☐ parent and child
☐ persons related by blood
☐ persons related by marriage
☐ persons living in the same household
☐ persons formerly living in the same household
4. (Answer this question only if the plaintiff is filing on behalf of someone else, minor or incompetent)
The plaintiff and the victim are related as follows:
☐ married
☐ divorced
☐ parent and child
☐ persons related by blood
☐ persons related by marriage
☐ persons living in the same household
☐ persons formerly living in the same household
5. (Check A or B)
(A) ☐ The victim is in immediate and present danger of abuse from the defendant and an emergency ex parte order is necessary to protect the victim from serious

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harm. The plaintiff requests the following relief in the emergency ex parte order:
(check one or more)

- ☐ order the defendant not to abuse or injure the victim.
- ☐ order the defendant not to visit, assault, molest, harass or otherwise interfere with the victim.
- ☐ order the defendant not to threaten the victim.
- ☐ order the defendant to leave the residence located at _____ on or before _____

(describe other relief that plaintiff requests)

(B) ☐ The plaintiff does not request an emergency ex parte order.

6. Plaintiff requests the following order to be made by the court following notice to the defendant and a hearing: (check one or more)

- ☐ order the defendant not to abuse or injure the victim.
- ☐ order the defendant not to visit, assault, molest, harass or otherwise interfere with the victim.
- ☐ order the defendant not to threaten the victim.
- ☐ order the defendant to leave the residence located at _____ on or before _____

(describe other relief that plaintiff requests)

- ☐ order the defendant to pay attorney fees of the plaintiff in the sum of _____ on or before _____
- ☐ order the defendant to pay the court costs of this action in the sum of _____ on or before _____

7. Victim is a resident of the county wherein this petition is filed.

8. Plaintiff has stated the truth, the whole truth and nothing but the truth in this petition.

Plaintiff

Witness, my hand and seal,
affixed on the _____ day of _____, 19____

Court Clerk, Deputy Court Clerk,
or Notary Public

C. No filing fee shall be charged the plaintiff at the time the petition is filed. The court may assess court costs and filing fees to either party at the hearing on the petition.

D. The plaintiff shall prepare the petition as set forth above or, at the request of the plaintiff, the clerk of the court or the victim-witness coordinator shall prepare or assist the plaintiff in preparing the same.

Added by Laws 1982, c. 255, § 3. Amended by Laws 1983, c. 290, § 1, eff. Nov. 1, 1983.

Section 7 of Laws 1983, c. 290 provides for severability and § 8 provides for an effective date.

tions of § 60 et seq. of this title in the court clerks rather than the district attorneys does not affect the validity of the legislation. Op. Atty. Gen. No. 82-249 (Sept. 17, 1982).

Notes of Decisions

1. Validity

The decision by the legislature to vest certain duties concerning the administration of por-

§ 60.3. Emergency ex parte order—Hearing

If a plaintiff requests an emergency ex parte order pursuant to Section 60.2 of this title, the court shall hold an ex parte hearing on the same day the petition is filed. The court may, for good cause shown at the hearing, issue any emergency ex parte

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order that it finds necessary to protect the victim from immediate and present danger of domestic abuse. The emergency ex parte order shall be in effect until after the full hearing is conducted. An emergency ex parte order authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim; or
4. An order to the defendant to leave the residence.

Added by Laws 1982, c. 255, § 4. Amended by Laws 1983, c. 290, § 2, eff. Nov. 1, 1983.

§ 60.4. Service of process—Ex parte orders—Hearing—Protective orders—Period of relief

A. A copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be served upon the defendant in the same manner as a summons. Ex parte orders shall be given priority for service by the sheriff's office and can be served twenty-four (24) hours a day.

B. Within ten (10) days of the filing of the petition the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

C. At the hearing, the court may grant any protective order to bring about the cessation of domestic abuse against the victim.

D. Protective orders authorized by this section may include the following:

1. An order to the defendant not to abuse or injure the victim;
2. An order to the defendant not to visit, assault, molest, harass or otherwise interfere with the victim;
3. An order to the defendant not to threaten the victim;
4. An order to the defendant to leave the residence;
5. An order awarding attorney fees; and
6. An order awarding court costs.

E. Any relief granted by the court may be for a fixed period not to exceed one (1) year. The court may extend any order, upon motion of either party, for such additional time as it deems necessary to protect the victim from domestic abuse. The court may modify its order at any subsequent time upon motion by either party or approve any consent agreement entered into by the plaintiff and defendant. No order issued under the Protection from Domestic Abuse Act¹ shall in any manner affect title to real property.

Added by Laws 1982, c. 255, § 5. Amended by Laws 1983, c. 290, § 3, eff. Nov. 1, 1983.

¹ Section 60 et seq. of this title.

§ 60.5. Copies of ex parte or final protective orders to be sent to appropriate law enforcement agencies

Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff.

Added by Laws 1982, c. 255, § 6. Amended by Laws 1983, c. 290, § 4, eff. Nov. 1, 1983.

Notes of Decisions

1. Validity

The decision by the legislature to vest certain duties concerning the administration of por-

tions of § 60 et seq. of this title in the court clerks rather than the district attorneys does not affect the validity of the legislation. Op. Atty. Gen. No. 82-249 (Sept. 17, 1982).

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§ 60.6. Violation of ex parte or final protective order—Penalty

Any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a jail term of not more than one (1) year, or both. Ex parte and final protective orders shall include notice of these penalties.

Added by Laws 1982, c. 255, § 7. Amended by Laws 1983, c. 290, § 5, eff. Nov. 1, 1983.

§ 60.7. Statewide validity of orders

All orders issued pursuant to the provisions of the Domestic Abuse Act¹ shall have statewide validity, unless specifically modified or terminated by a judge of the district courts.

Added by Laws 1983, c. 290, § 6, eff. Nov. 1, 1983.

¹ Section 60 et seq. of this title.

POLICE

§§ 81, 82. Repealed by Laws 1977, c. 256, § 1-106, eff. July 1, 1978

See, now, title 11, §§ 10-119, 11-117, 12-111.

Category	Citation
1. Victim Compensation Program	147.005 et seq.
1.1 Responsible Agency	147.005(6), 147.125
1.2 Eligible Claimants	147.015, 147.025
1.3 Losses Covered	147.035
1.4 Minimum and Maximum Award	147.015(1)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	147.015(2)
1.7 Filing of Claim - Time Limit	147.015(6)
1.8 Emergency Award	147.055
1.9 Funding	147.225 et seq.
2. Restitution	
2.1 Sentencing Option	137.101 (compensatory fine), 137.103, 137.106
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	44.410 et seq.
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	162.285
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	147.365
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	161.325(2), 161.326(2) (of offender found not guilty on insanity grounds)
7.9 of Escape of Offender	161.325(2), 161.326(2)
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	137.530; 144.790
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	142.010 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	136.345
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	107.700, 107.718 et seq.; 133.055 (citation for domestic violence)
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	147.205(2), 147.215(2)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	147.115 (victim compensation records)
15.4 Sexual Assault Counselor Privilege	

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Oregon Revised Statutes
Chapter 147

Compensation for Victims of Crime

GENERAL PROVISIONS

147.005 Definitions. As used in ORS 147.005 to 147.365 unless the context requires otherwise:

(1) "Applicant" means any victim of a compensable crime who applies to the department for compensation under ORS 147.005 to 147.365. "Applicant" includes any person who was a dependent of a deceased victim at the time of the death of that victim.

(2) "Board" means the Workers' Compensation Board.

(3) "Child" means an unmarried person who is under 18 years of age and includes a posthumous child, stepchild or an adopted child.

(4) "Compensable crime" means an intentional, knowing or reckless act that results in serious bodily injury or death of another person and which, if committed by a person of full legal capacity, would be punishable as a crime in this state.

(5) "Dependent" means such relatives of a deceased victim who wholly or partially were dependent upon the victim's income at the time of death or would have been so dependent but for the victim's incapacity due to the injury from which the death resulted.

(6) "Department" means the Department of Justice.

(7) "Injury" means actual bodily harm and, with respect to a victim, includes pregnancy and mental or nervous shock.

(8) "Law enforcement official" means a sheriff, constable, marshal, municipal policeman or member of the Oregon State Police and such other persons as may be designated by law as a peace officer.

(9) "Relative" means a victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister or spouse's parents.

(10) "Victim" means a person:

(a) Killed or injured in this state as a result of a compensable crime perpetrated or attempted against him;

(b) Killed or injured in this state while attempting to assist a person against whom a compensable crime is being perpetrated or attempted, if that attempt of assistance would be expected of a reasonable man under the circumstances;

(c) Killed or injured in this state while assisting a law enforcement official to apprehend a person who has perpetrated a crime or to prevent the perpetration of any such crime, if that assistance was in response to the express request of the law enforcement official; or

(d) Killed or injured in another state as a result of a criminal episode that began in this state. [1977 c.376 §1]

147.010 [Amended by 1973 c.32 §1; renumbered 133.743]

147.015 Eligibility for compensation; generally. A person is entitled to an award of compensation under ORS 147.005 to 147.365 if:

(1) He is a victim, or is a dependent of a deceased victim of a compensable crime that resulted in a compensable loss of more than \$250;

(2) The appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim within 72 hours after its perpetration, unless the department finds good cause exists for the failure of notification;

(3) The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant or the department has found that the applicant's failure to cooperate was for good cause;

(4) The victim and his assailant were not related or sharing the same household;

(5) The death or injury to the victim was not substantially attributable to his wrongful act or substantial provocation of his assailant; and

(6) His application for an award of compensation under ORS 147.005 to 147.365 is filed with the department:

(a) Within six months of the date of the injury to the victim; or

(b) Within such further extension of time as the department for good cause shown, allows. [1977 c.376 §3]

147.020 [Renumbered 133.747]

147.025 Eligibility of relative not dependent of victim. Notwithstanding ORS 147.015 (1), a relative of a victim even though he was not a dependent of the victim, is eligible for compensation for reasonable medical expenses for the victim, if:

(1) Such expenses were paid by him; and

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147.035 PROCEDURE IN CRIMINAL MATTERS GENERALLY

(2) He files a claim in the manner provided in ORS 147.015 (2) to (6). [1977 c.376 §4]

147.030 [Renumbered 133.753]

147.035 Amounts and types of losses compensable. (1) Losses compensable under ORS 147.005 to 147.365 resulting from death or injury to a victim include:

(a) In the case of injury:

(A) Reasonable medical and hospital expenses, including psychiatric or psychological expenses of \$1,000 or less, up to a maximum amount of \$10,000;

(B) Loss of earnings, not exceeding \$200 per week up to a maximum amount of \$10,000; and

(C) Rehabilitation up to a maximum amount of \$3,000.

(b) In the case of death:

(A) Burial expenses up to a maximum amount of \$1,000;

(B) Reasonable medical and hospital expenses up to a maximum amount of \$10,000; and

(C) Loss of support to the dependents of the victim not exceeding \$200 per week up to a maximum amount of \$10,000, less any amounts paid for loss of earnings.

(2) Compensable losses do not include:

(a) Pain and suffering or property damage; or

(b) Aggregate damages to the victim and to the dependents of a victim exceeding \$23,000. [1977 c.376 §5]

147.040 [Renumbered 133.757]

147.045 Notification of district attorney upon filing of compensation claim; deferral of compensation proceedings; emergency awards. (1) Upon filing of a claim pursuant to ORS 147.005 to 147.365, the department shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within 10 days after such notification, the district attorney advises the department that a criminal prosecution is pending upon the same alleged crime and requests that action by the department be deferred, the department shall defer all proceedings under ORS 147.005 to 147.365 until such time as such criminal prosecution has been concluded and shall so notify the district attorney and the applicant. When such criminal prosecution has been concluded, the dis-

trict attorney shall promptly so notify the department.

(2) Nothing in this section shall limit the authority of the department to grant emergency awards pursuant to ORS 147.055. [1977 c.376 §6]

147.050 [Renumbered 133.763]

147.055 Emergency awards; amount; effect on final award. (1) Notwithstanding the provisions of ORS 147.045 (1), the department may make an emergency award to the applicant pending a final decision in the claim, if it appears to the department, prior to taking action upon the claim that:

(a) The claim is one with respect to which an award probably will be made; and

(b) Undue hardship will result to the applicant if immediate payment is not made.

(2) (a) The amount of such emergency award shall not exceed \$1,000.

(b) The amount of such emergency award shall be deducted from any final award made as a result of the claim.

(c) The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the recipient to the department. [1977 c.376 §7]

147.060 [Renumbered 133.767]

147.070 [Renumbered 133.773]

147.080 [Renumbered 133.777]

147.090 [Renumbered 133.783]

147.100 [Renumbered 133.787]

COMPENSATION PROCEDURE

147.105 Application for compensation; contents; additional information; amended applications. (1) An applicant for compensation under ORS 147.005 to 147.365 must file an application under oath on a form furnished by the department. The application shall include:

(a) The name and address of the victim;

(b) If the victim is deceased, the name and address of the applicant and his relationship to the victim, the names and addresses of the victim's dependents and the extent to which each is so dependent;

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(c) The date and nature of the crime or attempted crime on which the application for compensation is based;

(d) The date and place where, and the law enforcement officials to whom, notification of the crime was given;

(e) The nature and extent of the injuries sustained by the victim, the names and addresses of those giving medical and hospital treatment to the victim and whether death resulted;

(f) The loss to the applicant and to such other persons as are specified under paragraph (b) of this subsection, resulting from the injury or death;

(g) The amount of benefits, payments or awards, if any, payable from any source, which the applicant or other person, listed under paragraph (b) of this subsection, has received or to which he is entitled as a result of the injury or death;

(h) Releases authorizing the surrender to the department of reports, documents and other information relating to the matters specified under this subsection; and

(i) Such other information as the department determines is necessary.

(2) The department may require that the applicants submit with the application materials substantiating the facts stated in the application.

(3) If the department finds that an application does not contain the required information or that the facts stated therein have not been substantiated, it shall notify the applicant in writing of the specific additional items of information or materials required and that the applicant has 30 days from the date of mailing in which to furnish those items to the department. Unless an applicant requests and is granted an extension of time by the department, the department shall reject with prejudice the claim of the applicant for failure to file the additional information or materials within the specified time.

(4) An applicant may file an amended application or additional substantiating materials to correct inadvertent errors or omissions at any time before the department has completed its consideration of the original application.

(5) The filing of additional information or the amendment of the application pursuant to subsection (3) or (4) of this section shall be considered for the purposes of ORS 147.005 to

147.365 to have been filed at the same time as the original application. [1977 c.376 §8]

147.110 [Amended by 1973 c.836 §123; renumbered 133.793]

147.115 Confidentiality of application information; board proceedings; use of record; witnesses before board. (1) All information submitted to the department by an applicant and all hearings of the board under ORS 147.005 to 147.365 shall be open to the public unless the department or board determines that the information shall be kept confidential or that a closed hearing shall be held because:

(a) The alleged assailant has not been brought to trial and disclosure of the information or a public hearing would adversely affect either his apprehension or his trial;

(b) The offense allegedly perpetrated against the victim is rape, sodomy or sexual abuse and the interests of the victim or of the victim's dependents require that the information be kept confidential or that the public be excluded from the hearing;

(c) The victim or alleged assailant is a minor; or

(d) The interests of justice would be frustrated rather than furthered, if the information were disclosed or if the hearing were open to the public.

(2) (a) A record shall be kept of the proceedings held before the board and shall include the board's findings of fact and conclusions concerning the amount of compensation, if any, to which the applicant and the dependents of a deceased victim are entitled.

(b) No part of the record of any proceedings before the board may be used for any purpose in a criminal proceeding except in the prosecution of a person alleged to have perjured himself in his testimony before the board.

(c) Where the interests of justice require, the board may refuse to disclose to the public the names of victims or other material in the record by which the identity of the victim could be discovered.

(3) Notwithstanding paragraphs (b) and (c) of subsection (2) of this section, the record of the proceedings held before the board is a public record. However, any record or report obtained by the board, the confidentiality of which is protected by any other law, shall remain confidential subject to such law.

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(4) Witnesses required to appear at any proceeding before the board shall receive such fees and mileage allowance as are provided for witnesses in civil actions. (1977 c.376 §9)

147.120 [Renumbered 133.797]

147.125 Considerations in determining amount of compensation; deduction of other benefits. In determining the amount of compensation to which an applicant is entitled, the department shall consider the facts stated on the application filed pursuant to ORS 147.105, and:

(1) Need not consider whether or not the alleged assailant has been apprehended or brought to trial or the result of any criminal proceedings against that person;

(2) Shall determine the amount of the loss to the applicant and, in the case of a deceased victim, of the victim's dependents as determined under ORS 147.035;

(3) Shall determine the degree or extent to which the victim's acts or conduct provoked or contributed to his injuries or death, and shall reduce or deny the award of compensation accordingly. However, the department may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility 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;

(4) Shall deduct the sum of \$250, unless the department finds that the deduction will result in an extreme hardship to the applicant;

(5) Shall deduct the amount of benefits, payments or awards, payable under the Workers' Compensation Law, from local governmental, state or federal funds or from any source, and which he or his dependents have received or to which he or his dependents are entitled as a result of the death or injury of the victim; and

(6) Shall award the resultant amount to the applicant as provided in ORS 147.165. (1977 c.376 §10)

147.130 [Renumbered 133.803]

147.135 Processing compensation application by department; order; contents. After processing the application filed under ORS 147.105 the department shall enter an order stating:

(1) Its findings of fact;

(2) Its decision as to whether or not compensation is due under ORS 147.005 to 147.365;

(3) The amount of compensation, if any, which is due under ORS 147.005 to 147.365, as determined pursuant to ORS 147.125;

(4) The person or persons to whom the compensation should be paid;

(5) The percentage share of the total compensation award and the dollar amount each person is to receive; and

(6) Whether disbursement of the compensation awarded is to be made in a lump sum or in periodic payments or to a trustee as provided in ORS 147.165. (1977 c.376 §14)

147.140 [Renumbered 133.805]

147.145 Review of order; reconsideration; notice to applicant. If the applicant disagrees with the order entered under ORS 147.135, he may request review by the department. The department shall reconsider any order for which a request for review is received. The department shall notify the applicant of its decision on review within 30 days of the department's receipt of the request for review. (1977 c.376 §15)

147.150 [Amended by 1963 c.550 §1; 1973 c.836 §124; renumbered 133.807]

147.155 Appeal to Workers' Compensation Board; hearing; record; evidence considered; board determination not subject to further review. (1) Any applicant who requests review by the department under ORS 147.145 and who disagrees with the decision of the department on review may appeal to the board.

(2) The request for hearing shall be in writing. The request shall include the applicant's address, shall be signed by the applicant and shall be mailed to the board.

(3) The board shall conduct a hearing upon at least 10 days' notice by mail to all interested persons.

(4) A record of all proceedings at the hearing shall be kept but need not be transcribed.

(5) The board is not bound by rules of evidence or by technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice. However, no evidence is admissible at a hearing that has not previously been considered by the department. The decision by the board shall be final and shall not be subject to

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further administrative or judicial review. (1977 c.376 §15a)

147.160 [Amended by 1973 c.836 §125; renumbered 133.809]

147.165 Payment of awards; awards to minors and incompetents. (1) The award made under ORS 147.005 to 147.365 shall be paid in a manner determined by the department.

(2) Where a person entitled to receive an award under ORS 147.005 to 147.365 is a person under the age of 18 years or an incompetent, the award may be paid to a relative, guardian or attorney of such person on behalf of and for the benefit of such person. In such case the payee shall:

(a) File an annual accounting of the award with the department; and

(b) Take such other action as the department shall determine is necessary and appropriate for the benefit of the beneficiary of the award. (1977 c.376 §16)

147.170 [Amended by 1973 c.836 §126; renumbered 133.813]

147.180 [Amended by 1973 c.836 §127; renumbered 133.815]

147.190 [Renumbered 133.817]

147.200 [Renumbered 133.823]

ADMINISTRATIVE PROVISIONS

147.205 Authority of Department of Justice; assistance from other agencies; rules; examination of victims; reports to Governor and Legislative Assembly. To carry out the provisions and purposes of ORS 147.005 to 147.365, the department shall have the power and duty to:

(1) Appoint a secretary, clerks and such other employees and agents as it determines are necessary, fix their compensation within the limitations provided by law, and prescribe their duties. Such employees shall be subject to the provisions of ORS 656.754.

(2) Request from law enforcement officials and from any other agency of the state or local governmental unit such assistance and information as will enable the department to carry out its functions and duties.

(3) Adopt rules pursuant to ORS 183.310 to 183.550.

(4) Direct medical examination of victims.

(5) Determine all claims for awards filed with the department pursuant to ORS 147.005 to 147.365, and to reinvestigate or reopen cases as the department deems necessary.

(6) Report annually to the Governor and biennially to the Legislative Assembly on its activities. (1977 c.376 §12)

147.210 [Renumbered 133.825]

147.215 Attorney General as legal adviser to department; assistance by governmental agencies. (1) The Attorney General shall serve as legal adviser to the department for all matters arising under ORS 147.005 to 147.365.

(2) Law enforcement officials and other agencies of the state or local governmental units are authorized to give and shall provide any assistance or information requested by the department under ORS 147.205 (2). (1977 c.376 §13)

147.220 [Amended by 1961 c.389 §4; renumbered 133.827]

147.225 Criminal Injuries Compensation Account. There is established the Criminal Injuries Compensation Account. All moneys in the account are continuously appropriated for and may be used by the department for the purposes authorized in ORS 147.005 to 147.365. (1977 c.376 §22)

147.230 [Amended by 1973 c.836 §128; renumbered 133.833]

147.235 [1961 c.389 §3; renumbered 133.837]

147.240 Department of Justice to submit claims to account for payment of awards. After the entry of an award under ORS 147.005 to 147.365, the department shall submit the claim for payment from the Criminal Injuries Compensation Account pursuant to ORS 293.295 to 293.460 and 293.465 to 293.510. (1977 c.376 §23)

147.245 Disposition of moneys recovered from assailant; disposition of gifts or grants. (1) Any moneys recovered by the department under ORS 147.345 and 147.355 shall be credited to the Criminal Injuries Compensation Account.

(2) Any gifts, contributions, grants or federal funds specifically given to the department for the benefit of victims of crimes shall be credited to the Criminal Injuries Compensation Account. (1977 c.376 §24)

147.250 [Renumbered 133.839]

147.253 [Renumbered 133.843]

147.255 Recovery of moneys paid on fraudulent claims; recovery of fees. The department may institute suit:

(1) To recover any awards made because of fraudulent claims.

(2) On behalf of the applicant or recipients, to recover all fees paid to a counsel or agent in violation of ORS 147.315. [1977 c.376 §25]

147.256 [Renumbered 133.845]

147.260 [Renumbered 133.847]

147.270 [Renumbered 133.853]

147.280 [Renumbered 133.855]

147.290 [Amended by 1961 c.389 §1; renumbered 133.857]

MISCELLANEOUS PROVISIONS

147.305 Effect of criminal conviction on compensation proceedings. If any person is convicted of a crime based on a compensable crime for which application for compensation is made, proof of the conviction shall be conclusive evidence that the crime was committed. [1977 c.376 §11]

147.315 Charging fees to applicants prohibited. No fee may be charged to the applicant in any proceeding under ORS 147.005 to 147.365. [1977 c.376 §17]

147.325 Compensation not subject to assignment or legal process prior to receipt by beneficiary. No compensation payable under ORS 147.005 to 147.365 shall, prior to actual receipt thereof by the person or beneficiary entitled thereto, or their legal representatives, be assignable or subject to execution, garnishment, attachment or any other process, including process to satisfy an order or judgment for support or alimony. [1977 c.376 §18]

147.335 Compensation rights not to survive beneficiary; death of beneficiary after filing of application. The rights to compensation created by ORS 147.005 to 147.365 are personal and shall not survive the death of the person or beneficiary entitled thereto. However, if such death occurs after an application for compensation has been filed with the department, the proceeding shall not abate, but may be continued by the legal

representative of the decedent's estate. [1977 c.376 §19]

147.345 State subrogated to rights accruing to beneficiary; suit by state against assailant; disposition of proceeds. (1) The acceptance of an award made pursuant to ORS 147.005 to 147.365 shall subrogate the state, to the extent of such award, to any right or right of action accruing to the applicant or recipient.

(2) (a) On behalf of the state, the department may bring suit against an assailant for money damages, but must first notify the applicant or recipient of an award and give him an opportunity to participate in the prosecution of the suit.

(b) The excess of the amount recovered in any such suit over the amount of the award under ORS 147.005 to 147.365 plus costs of suit and attorney fees actually incurred shall be paid to the applicant or recipient of the award. [1977 c.376 §20]

147.355 Claim by state against recoveries from assailant; notice of award; Marion County Circuit Court to adjudicate rights. (1) The state has a claim for the amount of compensation paid under ORS 147.005 to 147.365 upon all claims, demand or causes of action against an assailant to recover for the injuries or death of a victim which were the basis for an award.

(2) At the time an award is paid under ORS 147.005 to 147.365 the department shall give written notice of this claim to the applicant and all other recipients of the award. The claim attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the claim, demand, cause of action or suit against the assailant after notice is given.

(3) On petition filed by the department on behalf of the state or by the applicant or other recipient of an award, the Circuit Court for Marion County, on written notice to all interested parties, shall adjudicate the rights of the parties and enforce the claim. [1977 c.376 §21]

147.365 Law enforcement agencies to inform crime victims of compensation procedure; agencies not civilly liable for failure to comply. (1) All law enforcement agencies in this state shall deliver cards to victims of crime stating the procedure to be followed in applying for compensation under ORS 147.005 to 147.365.

(2) No law enforcement agency shall be civilly liable for a failure to comply with subsection (1) of this section. [1977 c.376 §22]

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Title 137

Restitution

(Compensatory Fine)

137.101 Compensatory fine. (1) Whenever the court imposes a fine as penalty for the commission of an intentional crime resulting in serious physical injury for which the person injured by the act constituting the crime has a remedy by a civil action, unless the issue of punitive damages has been previously decided in a civil case arising out of the same act and transaction, the court may order that the defendant pay any portion of the fine separately to the clerk of the court as compensatory fines in the case. The clerk shall pay over to the injured victim or victims, as directed in the court's order, moneys paid to the court as compensatory fines under this subsection.

(2) Compensatory fines may be awarded in addition to restitution awarded under ORS 137.103 to 137.109.

(3) Nothing in this section limits or impairs the right of a person injured by a defendant's criminal acts to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay compensatory fines under this section may not be introduced in any civil action arising out of the facts or events which were the basis for the compensatory fine. However, the court in such civil action shall

credit any compensatory fine paid by the defendant to a victim against any judgment for punitive damages in favor of the victim in the civil action. [1981 c.637 §2]

(Restitution)

137.103 Definitions for ORS 137.101 to 137.109. As used in ORS 137.101 to 137.109:

(1) "Criminal activities" means any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.

(2) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.

(3) "Restitution" means full, partial or nominal payment of pecuniary damages to a victim. Restitution is independent of and may be awarded in addition to punitive compensation awarded under ORS 137.101.

(4) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities; "victim" shall not include any co-participant in the defendant's criminal activities. [1977 c.371 §1; 1981 c.637 §1]

137.106. (1) When a person is convicted of criminal activities which have resulted in pecuniary damages, unless the presentence investigation report contains such a presentation, the district attorney shall investigate and present to the court, prior to or at the time of sentencing, evidence of the nature and amount of such damages. In addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim.

(2) In determining whether to order restitution which is complete, partial or nominal, the court shall take into account:

(a) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;

(b) The ability of the defendant to pay restitution on an instalment basis or on other conditions to be fixed by the court; and

(c) The rehabilitative effect on the defendant of the payment of restitution and the method of payment.

(3) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall at the time of sentencing allow *[him]* the defendant to be heard on such issue.

137.109 Effect of restitution order on other remedies of victim; credit of restitution against subsequent civil judgment; effect of criminal judgment on subsequent civil action. (1) Nothing in ORS 137.103 to 137.109, 137.540, 144.275, 161.675 and 161.685 limits or impairs the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution pursuant to ORS 137.103 to 137.109, 137.540, 144.275, 161.675 and 161.685 may not be

introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant if it is involved in a subsequent civil action. [1977 c.371 §7]

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* * *

FEEs

44.410 Fees of witnesses. (1) As used in this section, "judge" means judge of a court of record, judge of a district court, justice of the peace, referee, sheriff or other officer.

(2) The fees of witnesses shall be \$5 for each day's attendance before a judge. [Amended by 1959 c.158 §1]

44.420 [Repealed by 1959 c.158 §2]

44.430 Mileage of witnesses. Every witness whose fees are prescribed in ORS 44.410 who is required to travel in order to execute or perform his duties as a witness, in addition to the fees prescribed, is entitled to mileage at the rate of eight cents a mile, and no more, in going to and returning from the place where the service is performed.

44.440 Payment of fees due from county to witnesses in Multnomah County. (1) The fees for mileage and per diem due from a county to each witness called to serve in the circuit court or county court of any county having more than 400,000 inhabitants, according to the latest federal decennial census, shall be paid on the day when the witness ceases his service as a witness. As soon as the witness ceases to serve he shall make and file with the court administrator a verified statement showing the amount due him for mileage and the number of days he served as a witness. The claim shall be verified by the court administrator; and if found to be correct, he shall authorize a warrant to be drawn by the Finance Division for the amount due to witness.

(2) The county clerk or court administrator shall prepare and have printed a form suitably arranged for the verified claim and a form for a certificate showing the claim to be correct as to the number of days of service. [Amended by 1963 c.519 §24; 1977 c.408 §1]

Note: 44.440 and 44.450 are repealed operative January 1, 1983. See sections 5 and 141, chapter 3, Oregon Laws 1981 (special session).

44.450 Time and manner of claiming witness fees in criminal proceedings in counties other than Multnomah. In counties having less than 400,000 inhabitants, according to the latest federal decennial census, the county clerk must, on the application of a witness in a criminal action or proceeding, enter in a fee book, under the title of the action in which the witness was subpoenaed or recognized, the number of days he attended and the number of miles he necessarily traveled in consequence of the subpoena or recognition. The clerk shall swear the witness to the statement contained in that entry. The mileage and per diem of a witness in a criminal action or proceeding shall be claimed as in this section provided, at the term of court

* * *

162.285 Tampering with a witness. (1) A person commits the crime of tampering with a witness if:

(a) He knowingly induces or attempts to induce a witness or a person he believes may be called as a witness in any official proceeding to offer false testimony or unlawfully withhold any testimony; or

(b) He knowingly induces or attempts to induce a witness to absent himself from any official proceeding to which he has been legally summoned.

(2) Tampering with a witness is a Class C felony. [1971 c.743 §203; 1979 c.231 §1]

* * *

161.325 Entry of order finding defendant not responsible on grounds of disease or defect; order to include whether victim wants notice of hearings or release of defendant. (1) After entry of judgment of not responsible due to mental disease or defect, the court shall, on the basis of the evidence given at the trial or at a separate hearing, if requested by either party, make an order as provided in ORS 161.327 or 161.329, whichever is appropriate.

(2) If the court makes an order as provided in ORS 161.327, it shall also:

(a) Determine on the record what offense the person would have been convicted of had the person been found responsible; and

(b) Make specific findings on whether there is a victim of the crime for which the defendant has been found "not responsible" and, if so, whether the victim wishes to be notified, under ORS 161.326 (2), of any Psychiatric Security Review Board hearings concerning the defendant and of any conditional release, discharge or escape of the defendant.

(3) The court shall include any such findings in its order. [1971 c.743 §44; 1977 c.380 §5; 1979 c.885 §1; 1981 c.711 §1]

161.326 Commission of crime by person under board jurisdiction; notice to victim. (1) Whenever a person already under the board's jurisdiction commits a new crime, the court or the board shall make the findings described in ORS 161.325 (2).

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(2) If the trial court or the board determines that a victim desires notification as described in ORS 161.325 (2), the board shall make a reasonable effort to notify the victim of board hearings, conditional release, discharge or escape. [1981 c.711 §9]

Note: 161.326, 161.387 and 161.400 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 161 but not to any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

161.327 Order giving jurisdiction to Psychiatric Security Review Board; court to commit or conditionally release defendant; notice to board; appeal. (1) Following the entry of a judgment pursuant to ORS 161.319 and the dispositional determination under ORS 161.325, if the court finds that the person would have been guilty of a felony, or of a misdemeanor during a criminal episode in the course of which the person caused physical injury or risk of physical injury to another, and if the court finds by a preponderance of the evidence that the person is affected by

mental disease or defect and presents a substantial danger to others requiring commitment to a state mental hospital designated by the Mental Health Division or conditional release, the court shall order the person placed under the jurisdiction of the Psychiatric Security Review Board for care and treatment.

161.400 Leave of absence; notice to board. If, at any time after the commitment of a person to a state hospital under ORS 161.341 (1), the superintendent of the hospital is of the opinion that a leave of absence from the hospital would be therapeutic for the person and that such leave would pose no substantial danger to others, the superintendent may authorize such leave for up to 48 hours in accordance with rules adopted by the Psychiatric Security Review Board. However, the superintendent, before authorizing the leave of absence, shall first notify the board for the purposes of ORS 161.326 (2). [1981 c.711]

SECTION 1. ORS 137.530 is amended to read:

137.530. (1) Probation officers, when directed by the court, shall fully investigate and report to the court in writing on the circumstances of the offense, criminal record, social history and present condition and environment of any defendant; and unless the court directs otherwise in individual cases, no defendant shall be placed on probation until the report of such investigation has been presented to and considered by the court.

(2) Whenever a presentence report is made, the preparer of the report shall make a reasonable effort to contact the victim and obtain a statement describing the effect of the defendant's offense upon the victim. If the victim is under 18 years of age, the preparer shall obtain the consent of the victim's parent or guardian before contacting the victim. The preparer of the report shall include the statement of the victim in the presentence investigation report. If the preparer is unable to contact the victim or if the victim declines to make a statement, the preparer shall report that the preparer was unable to contact the victim after making reasonable efforts to do so, or, if contact was made with the victim, that the victim declined to make a statement for purposes of this section. Before taking a statement from the victim, the preparer of the report shall inform the victim that the statement will be made available to the defendant and the defendant's attorney prior to sentencing as required under ORS 137.079.

(3) Whenever desirable, and facilities exist therefor, such investigation shall include physical and mental examinations of such defendants.

(4) As used in this section, "victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of an offense, and includes, in the case of any homicide, an appropriate member of the immediate family of any such person.

SECTION 2. ORS 144.790 is amended to read:

144.790. (1) Except as provided in section 3, chapter 648, Oregon Laws 1979, whenever any person is convicted of a felony, the Corrections Division shall furnish a presentence report to the sentencing court. If a presentence report has previously been prepared by the Corrections Division with respect to the defendant, the division shall furnish a copy of that report, and a supplement bringing it up to date, to the sentencing court. The report shall estimate the range of duration of imprisonment applicable in the individual case and the information used to estimate that range. The reports shall contain recommendations with respect to the sentencing of the defendant, including incarceration or alternatives to incarceration whenever the Corrections Division officer preparing the report believes such an alternative to be appropriate. All recommendations shall be for the information of the court and shall not limit the sentencing authority of the court.

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(2) Whenever a presentence report is made, the preparer of the report shall make a reasonable effort to contact the victim and obtain a statement describing the effect of the defendant's offense upon the victim. If the victim is under 18 years of age, the preparer shall obtain the consent of the victim's parent or guardian before contacting victim. The preparer of the report shall include the statement of the victim in the presentence investigation report. If the preparer is unable to contact the victim or if the victim declines to make a statement, the preparer shall report that the preparer was unable to contact the victim after making reasonable efforts to do so, or, if contact was made with the victim, that the victim declined to make a statement for purposes of this section. Before taking a statement from the victim, the preparer of the report shall inform the victim that the statement will be made available to the defendant and the defendant's attorney prior to sentencing as required under ORS 137.079.

(3) The commission shall propose to the board and the board shall adopt rules establishing a uniform presentence report form for use pursuant to subsection (1) of this section.

(4) As used in this section, "victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of an offense, and includes, in the case of any homicide, an appropriate member of the immediate family of any such person.

142.010 Officer's custody of stolen property is subject to order of magistrate or court. When property alleged to have been the subject of a theft comes into the custody of a peace officer, he shall hold it subject to the order of the magistrate or court, as provided in ORS 142.020. [Amended by 1971 c.743 §334]

142.020 Delivery of stolen property to owner. (1) On satisfactory proof of the title of the owner of the property, the magistrate who examines the charge against the person accused of the crime shall order it to be delivered to the owner, or his duly authorized agent, on his paying the reasonable and necessary expenses incurred in its preservation, which shall be ascertained and certified by the magistrate.

(2) If property that is the subject of a theft has not been delivered to the owner, the court before which a trial is had for the stealing thereof may, on like proof and condition, order its delivery to the owner or his agent. [Amended by 1971 c.743 §335]

142.030 Rights and authority conferred by order of delivery. The order provided for in ORS 142.020 entitles the owner or his agent to demand and receive the possession of the property from the officer having it in custody and authorizes such officer to deliver it accordingly; but it does not affect the rights of third persons.

142.040 Disposal of unclaimed money or property; sale of property. If stolen property is not claimed by the owner within 60 days from the conviction of the person charged with the theft, the officer having it in custody shall, if it is money, pay it into the county treasury. If it is other property, he shall sell it as upon an execution and, after paying the expenses of the sale and preservation of the property, which shall be ascertained and certified by the clerk of the court, pay the proceeds into the county treasury.

142.050 Title of purchaser at sale. A sale of property pursuant to ORS 142.040 conveys a good title to the purchaser as against any person.

142.060 Crediting and appropriating proceeds of sale paid into county treasury; rights of owner. Money paid into the county treasury pursuant to ORS 142.040 shall be credited and appropriated as a fine imposed upon a person convicted of theft; but the owner of the property, at any time within six years of the conviction, upon making satisfactory proof of ownership before the county court of the county, may, by the order of such court, have the proceeds repaid to him from the county treasury. [Amended by 1971 c.743 §337]

142.070 Powers and duties of peace officers respecting theft and slaughter of animals and other property. All persons serving as special officers for the enforcement of any state or municipal law hereby are vested with the full powers of peace officers in so far as the same may be necessary or convenient for the apprehension of any persons engaged in, or accused of, the theft or slaughter of livestock, livestock carcasses, poultry, killed or dressed, or other personal property and products of the same or different kind from farms, pastures, ranges, industrial plants and other places of production or robbing the owners of such personal property, or other persons in possession of the same; for the prevention of such crimes; and for obtaining and seeking to obtain evidence of such crimes. It is the duty of all peace officers in the State of Oregon to enforce all laws for the protection of the property and the prevention of the crimes above mentioned.

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107.716 Hearing on relief; additional relief; effect on title to real property; no undertaking required. (1) If the respondent requests a hearing on the issue of any relief granted under ORS 107.718, the court shall hold a hearing, and may cancel or change any order issued thereunder.

(2) In addition to the relief granted under ORS 107.718, the court, in a hearing held pursuant to subsection (1) of this section, may:

(a) Award temporary custody of or establish temporary visitation rights with regard to the minor children of the parties;

(b) Require either party to move from any family residence whose title or right to occupy such premises is held jointly by the parties; and

(c) Assess against either party a reasonable attorney fee and such costs as may be incurred in the hearing.

(3) The court shall have the further power to approve any consent agreement to bring about a cessation of abuse of the parties. Any order or consent agreement made under this section may be amended at any time, except that no order shall continue for a period to exceed one year.

(4) No order or agreement made under ORS 107.705 to 107.720, 133.310 and 133.381 shall in any manner affect title to any real property.

(5) No undertaking shall be required in any proceeding under ORS 107.700 to 107.720.

(6) Any proceeding under ORS 107.700 to 107.720 shall be in addition to any other available civil or criminal remedies. [1981 c.780 §6 (enacted in lieu of 107.715)]

107.718 Petition for relief when petitioner in danger of abuse. (1) A person alleging abuse may petition the court for relief under this section. The circuit court shall hold an ex parte hearing on the day the petition is filed or on the following judicial day. At such hearing, the court may order, for a period not to exceed one year:

(a) That temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner, or that temporary custody of the minor children of the respondent or of the parties be awarded to the respondent;

(b) That the respondent be required to move from the petitioner's residence, if in the sole name of the petitioner, or if the parties are married to each other;

(c) That either or both of the parties be restrained from molesting or interfering with the other;

(d) That the respondent be restrained from molesting or interfering with the minor children whose custody is awarded to the petitioner; or

136.345 When attendance of woman officer is required. Whenever any woman or girl is interrogated with reference to the commission of any sexual crime, is accused of or charged with the commission of any sexual crime before any committing magistrate and is taken into custody therefor, or is called as a witness at a hearing before a committing magistrate with reference to any such class of crimes, and whether such crime has been committed by her or by some other person, she shall only be orally examined by or in the presence of a woman officer, appointed as provided in ORS 136.347. [Formerly 133.770]

* * *

FAMILY ABUSE PREVENTION

107.700 Short title. ORS 107.700 to 107.720 shall be known and may be cited as the "Abuse Prevention Act." [1977 c.845 §4]

107.705 Definitions for ORS 107.700 to 107.720. As used in ORS 107.700 to 107.720, 133.055, 133.310 and 133.315:

(1) "Abuse" means the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury;

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious bodily injury;

(c) Causing another to engage in involuntary sexual relations by force, threat of force or duress.

(2) "Family or household members" means spouses, former spouses, adult persons related by blood or marriage or persons cohabiting with each other or persons who cohabited with each other within one year immediately preceding the filing by one of them of a petition under ORS 107.710. [1977 c.845 §5; 1979 c.161 §1; 1981 c.780 §1]

107.710 Petition to circuit court for relief. (1) Any person may seek relief under ORS 107.700 to 107.720, by filing a petition with the circuit court alleging that the person has been the victim of abuse committed by the respondent. The circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.720.

(2) A person's right to petition for relief under ORS 107.700 to 107.720 shall not be affected by the person leaving the residence or household to avoid abuse. [1977 c.845 §6; 1981

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(e) That the respondent be restrained from entering on any premises when it appears to the court that such restraint is necessary to prevent the respondent from molesting or interfering with the petitioner or with the minor children whose custody is awarded to the petitioner.

(2) An order entered under this section shall be granted upon a showing by the petitioner that there is an immediate and present danger of abuse to the petitioner. Immediate and present danger under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily harm or engaged in abuse against the petitioner.

(3) An instructional brochure shall be available from the clerk of the circuit court explaining the rights set forth under the Abuse Prevention Act. The petition and order forms shall be available from the clerk of the court and shall be in substantially the following form:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF _____

_____,)
Petitioner,) NO.
_____,)
and _____) PETITION FOR RESTRAINING
_____,) ORDER TO PREVENT ABUSE
_____,)
Respondent.)

Petitioner alleges:

I.

I am a resident of _____ County, Oregon, or respondent is a resident of _____ County, Oregon.

II.

- I was married to respondent on _____, 19____.
- I was divorced from respondent on _____.
- I have been living with respondent since _____, 19____.

— I lived with respondent from _____, 19____, to _____, 19____.

III.

I am a victim of abuse committed by respondent in that respondent has:

- caused me bodily injury.
- attempted to cause me bodily injury.
- placed me in fear of imminent serious bodily injury.
- caused me to engage in involuntary sexual relations by force, threat of force or duress.

IV.

Petitioner should be granted the following relief:

- Respondent should be restrained from, in any manner, molesting or interfering with me.
- Respondent should be restrained from, in any manner, molesting or interfering with the minor child(ren) in my custody: (name children) _____

— Respondent should be required to move from the petitioner's residence, or the parties' marital residence and should not return to this residence, located at _____

— Respondent should be restrained from entering my: _____
— home
— school
— business
— place of employment

— Petitioner should be awarded custody of the following minor children of the parties, who are now residing with petitioner, or who are the petitioner's children: _____

— Respondent should be awarded custody of the following minor children of the parties, who are now residing with respondent, or who are the respondent's children: _____

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FINE OF UP TO \$300, A JAIL TERM OF UP TO SIX MONTHS, OR BOTH.

RELEVANT DATA:

Respondent: _____
Address: _____
Birthdate: _____
Race: _____
Age: _____
Height: _____
Weight: _____
Hair Color: _____
Eye Color: _____

(4) If the court orders relief, the clerk of the court shall have a true copy of the petition and order delivered to the county sheriff for service upon the respondent. Return of service shall be made in accordance with ORS 107.720. No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under paragraph (c) of subsection (1) of this section.

(5) If the respondent requests a court hearing upon the relief granted under this section, the clerk of the court shall notify the petitioner of the date and time of such hearing. The petitioner shall give to the clerk of the court information sufficient to allow such notification. (1981 c.780 §4)

107.720 Enforcement of restraining orders; law enforcement agency proceedings; contempt hearings; security. (1) Whenever a restraining order, as authorized by ORS 107.095 (1)(c) or (d), 107.716 or 107.718 which includes a security amount and an expiration date pursuant to ORS 107.716 or 107.718 and this section, is issued and the person to be restrained has actual notice thereof, the clerk of the court or any other person serving the petition and order shall deliver forthwith to a law enforcement agency a true copy of proof of service of petition and ex parte order on the respondent and a true copy of the order. Any order entered by the court which recites that the respondent appeared in person before the court, and which waives the necessity for further service of the order, shall not require an accompanying proof of service. Upon receipt of a true copy of proof of service, when required, and a true copy of the order, the law enforcement agency shall forthwith enter the order into the Law Enforcement Data System maintained by the Executive Department. Entry into the Law

Enforcement Data System shall constitute notice to all law enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county in the state. The petitioner may elect to deliver documents personally to a law enforcement agency or to have them delivered by a private person.

(2) In any situation where a restraining order described in subsection (1) of this section is terminated before the expiration date, the clerk of the court shall deliver forthwith a true copy of the termination order to the law enforcement agency with whom the original order was filed. Upon receipt of such termination order the law enforcement agency shall promptly remove the original order from the Law Enforcement Data System.

(3) Pending a contempt hearing for alleged violation of a restraining order issued pursuant to ORS 107.095 (1)(c) or (d), 107.716 or 107.718, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Whenever such restraining order is issued, the issuing court shall set a security amount for the violation of such order. (1977 c.845 §8; 1979 c.522 §1; 1981 c.780 §7)

* * *

133.055 Citation in lieu of custody; exception for domestic disturbance; notice of rights. (1) A peace officer in lieu of taking the person into custody may issue and serve a citation to the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450:

(2) Notwithstanding the provisions of subsection (1) of this section, when a peace officer is at the scene of a domestic disturbance and has probable cause to believe that an assault has occurred between spouses, former spouses or adult persons related by blood or marriage or persons of opposite sex residing together or who formerly resided together, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

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(3) Whenever any peace officer has reason to believe that a family or household member has been abused as defined in ORS 107.705, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or visitation with a minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order directing the party not granted custody to pay support of minor children, or for support of the other party if that party has a legal obligation to do so.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is under \$700.

For further information you may contact:

[1969 c.244 §2; 1977 c.845 §1; 1981 c.779 §1]

133.080 Cited person to appear before magistrate; effect of failure to appear. (1) The person cited shall appear before a magistrate of the county in which he was cited at the time, date and court specified in the citation, which shall not be later than two weeks from the date the citation was issued.

(2) If the cited person fails to appear at the time, date and court specified in the citation, and a criminal complaint or information is filed, the magistrate shall issue a warrant of arrest immediately upon the person's failure to appear. [1969 c.244 §5]

133.065 Service of citation; contents. (1) If a citation is issued as described in ORS 133.055, the peace officer shall serve one copy to the person arrested and shall, as soon as practicable, file a duplicate copy with the magistrate specified therein along with his proof of service.

(2) Each copy of the citation issued under authority of ORS 133.045 to 133.080, 133.110 and 156.050 shall contain:

(a) The name of the court at which the cited person is to appear.

(b) The name of the person cited.

(c) A brief description of the offense of which the person is charged, the date, the time and place at which the offense occurred, the date on which the citation was issued, and the name of the peace officer who issued the citation.

(d) The time, date and place at which the person cited is to appear in court.

(e) Whether a complaint or information had been filed at the time the citation was issued.

(f) If the arrest was made by a private party, the name of the arresting person.

(g) The following:

READ CAREFULLY

This citation is not a complaint or an information. One may be filed and you will be provided a copy thereof at the time of your first appearance. You MUST appear in court at the time set in the citation. IF YOU FAIL TO APPEAR AND A COMPLAINT OR INFORMATION HAS BEEN FILED, THE COURT WILL IMMEDIATELY ISSUE A WARRANT FOR YOUR ARREST.

Category	Citation
1. Victim Compensation Program	71-180-7 et seq.
1.1 Responsible Agency	71-180-7.1(a)
1.2 Eligible Claimants	71-180-7.3
1.3 Losses Covered	
1.4 Minimum and Maximum Award	71-180-7.5(a); 71-180-7.9(b),(c)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	71-180-7.9(a)(3)
1.7 Filing of Claim - Time Limit	71-180-7.4(b)
1.8 Emergency Award	71-180-7.8
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	18-1106
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	18-1106(e),(f)
3. Escrow and Forfeiture of Offender Profits	71-180-7.18
4. Witness Fees	42-5903(a),(b)
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	18-4952; 18-4953
6.2 Protective Orders	18-4954
7. Victim Notification	
7.1 of Compensation Program	71-180-7.2(k); 71-180-7.17
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	42-9717
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	62-1201 et seq. (funding for rape-crisis centers)
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	35-10181 et seq.
14.2 Domestic Violence Shelters	62-1201 et seq. (funding for domestic violence centers)
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	71-180-7.2(d)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	71-180-7.11 (compensation board records)
15.4 Sexual Assault Counselor Privilege	42-5945.1

PENNSYLVANIA

Pennsylvania Consolidated Statutes Annotated (Purdon)

Title 71

CRIME VICTIM'S COMPENSATION BOARD [NEW]

Termination of Board

For the termination of this Board by the Sunset Act, see § 1795.6(a) of this title.

§ 180—7. (Adm.Code § 477). Definitions

So far as it relates to the crime victim's compensation provisions, the following terms shall be defined as:

"Board" means the Crime Victim's Compensation Board.

"Claimant" means the person filing a claim pursuant to this act.

"Crime" means an act committed in Pennsylvania which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or defense, would constitute a crime as defined in and proscribed by Title 18 of the "Pennsylvania Consolidated Statutes," (relating to crimes and offenses): Provided, however, That no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this act unless such injury was intentionally inflicted through the use of a motor vehicle.

"Family," when used in reference to a person, shall mean (i) anyone related to such person within the third degree of consanguinity or affinity, (ii) anyone maintaining a common-law relationship with such person, or (iii) anyone residing in the same household with such person.

"Intervenor" shall mean a person who goes to the aid of another and suffers bodily injury or death as a direct result of acting not recklessly to prevent the commission of a crime, or to lawfully apprehend a person reasonably suspected of having committed such crime, or to aid the victim of such crime.

"Local law enforcement agency" means a police department of a city, borough, incorporated town or township.

"Out-of-pocket loss" means the unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care and treatment rendered in accordance with a religious method of healing as approved by the board, or other services reasonably necessary as a result of the injury upon which the claim is based and for which the claimant either has paid or is liable. In no case shall property damages or compensation for pain and suffering be included.

"Victim" shall mean a person, other than the alleged offender, who suffers bodily injury or death as a direct result of a crime.

1929, April 9, P.L. 177, No. 175, § 477, added 1976, July 9, P.L. 574, No. 139, § 2, effective in 120 days; 1976, Dec. 10, P.L. 1305, No. 287, § 1. As amended 1979, Dec. 13, P.L. 519, No. 114, § 1, imd. effective.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

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Section 3 of Act 1976, July 9, P.L. 574, No. 139 provides as follows:

"It is the declared purpose of the General Assembly in this act to promote the public welfare by establishing a means of providing for the financial losses of the innocent victims of crime or their surviving dependents and intervenors acting to prevent the commission of crime or to assist in the apprehension of suspected criminals."

Effective and Operative Date: Section 4 of Act 1976, July 9, P.L. 574, No. 139 provides as follows:

"This act shall take effect in 120 days, but in no event sooner than July 1, 1976. No claims shall be accepted for crimes which have occurred prior to the effective date of this act."

Section 4 of Act 1976, Dec. 10, P.L. 1305, No. 287, effective immediately, provides that the provisions of the above quoted section 4 of Act 139 are repealed insofar as inconsistent with the provisions of Act 287. For provision, added by section 2 of Act 1976, Dec. 10, P.L. 1305, No. 287, superseding original effective date, see section 180-7.16 of this title.

1. In general

General Assembly, in creating the crime victim's compensation program, never intended that it be equaled to tort action or remedy. *Gloeski v. Com., Pennsylvania Crime Victim's Compensation Bd.*, 425 A.2d 877, 57 Pa.Cmwith. 28, 1981.

For purpose of this section, motor vehicle injury could be "intentionally inflicted" only if act resulting in injury was committed with purpose of causing the injury or death of another or with knowledge that injury or death of another would be inevitable consequence. In re Turner, 403 A.2d 1346, 44 Pa.Cmwith. 326, 1979.

For purposes of this section providing that no act involving operation of motor vehicle which results in injury shall constitute crime for purposes of Crime Victim's Compensation Act unless such injury was intentionally inflicted through use of motor vehicle, word "injury" included death; reference only to "injury" reflected merely lack of symmetry and precision in drafting rather than intent to exclude death from motor vehicle injury restriction. *Id.*

Although actions of driver might have exhibited hardness of heart and wickedness of disposition sufficient to support verdict of third-degree murder, such malice did not rise to level of intent within meaning of statute providing that no act involving operation of motor vehicle resulting in injury would constitute crime for purposes of Crime Victim's Compensation Act unless such injury was intentionally inflicted through use of motor vehicle. *Id.*

§ 180-7.1 (Adm.Code § 477.1). Crime Victim's Compensation Board

(a) There is hereby created a departmental administrative board for the administration of this act, which shall be known as the Crime Victim's Compensation Board. Such board shall consist of three members no more than two of whom shall belong to the same political party, who shall be appointed by the Governor by and with the consent of a majority of the Senate.

(b) The term of office of each member shall be six years, except that the members first appointed shall serve for terms of six years, four years and two years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(c) Each member of the board shall be eligible for reappointment and any member of the board may be removed by the Governor for inefficiency, neglect of duty, or malfeasance in office.

(d) The Governor shall designate one member of the board as chairman thereof, to serve as such at the pleasure of the Governor.

(e) The members of the board shall devote their full time and capacity to their duties. The members of the board shall receive an annual starting salary of twenty-five thousand dollars (\$25,000). Thereafter they shall receive an annual salary to be fixed by the Executive Board of the Commonwealth within the amount made available by appropriation. The chairman shall receive five hundred dollars (\$500) additional compensation per annum.

1929, April 9, P.L. 177, No. 175, § 477.1, added 1976, July 9, P.L. 574, No. 139, § 2.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

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Termination of Board

For the termination of this Board by the Sunset Act, see § 1795.6(a) of this title.

Effective Date: See section 180-7.16 of this title.

1. In general

Neither 18 Pa.C.S.A. § 1106, on restitution to crime victims nor this section creating a crime victim's compensation

of the Commonwealth to suit against the Commonwealth by crime victims. *Reiff v. City of Philadelphia*, 365 A.2d board manifest a consent on the part 1357, 27 Pa.Cmwith. 504, 1976.

§ 180-7.2 (Adm.Code § 477.2). Powers and duties of board

The board shall have the following powers and duties:

(a) To establish and maintain a principal office in or near Harrisburg and such other offices within the Commonwealth as it may deem necessary.

(b) To appoint a secretary, counsel, clerks and such other employees and agents as it may deem necessary, fix their compensation within the limits provided by law, and prescribe their duties.

(c) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this act, including rules for the approval of attorney's fees for representation before the board or before the Commonwealth Court upon judicial review as provided for in section 477.7 of this act.¹ Awards of the attorney's fees shall be in addition to awards made to victims. Awards of attorney's fees shall in no case exceed fifteen per centum of the award to the victim or victims. It shall be unlawful for an attorney to contract for or receive any sum larger than the amount allowed.

(d) To request from the Pennsylvania State Police, from any county, municipal or township police departments and agencies and from any other State, municipal or township department or agency, or public authority, and the same are hereby authorized to provide such assistance and data as will enable the board to carry out its function and duties.

(e) To hear and determine all claims for awards filed with the board pursuant to this act, and to reinvestigate or reopen cases as the board deems necessary.

(f) To direct medical examinations of victims.

(g) To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this section may be delegated by the board to any member thereof.

(h) To take or cause to be taken affidavits or depositions within or without the State.

(i) To render each year to the Governor and to the General Assembly a written report of its activities. In its third annual report and in every third annual report thereafter, the board, upon investigation and study, shall include its findings and recommendations with respect to the limits on compensation. The investigation and study shall include but not be limited to an audit by the Auditor General or an independent accounting firm of the amounts paid to each person compensated so as to avoid duplications, other possible errors, or fraud.

(j) To arrange with the heads of other State agencies for the performance of any of its functions under this act with or without reimbursement and, with the approval of the Governor, delegate and authorize the re-delegation of any of its powers under this act.

(k) To establish a program to assure extensive and continuing publicity for the provisions relating to compensation under this act, including information on the right to file a claim, the scope of coverage, and procedures to be utilized incident thereto.

1929, April 9, P.L. 177, No. 175, § 477.2, added 1976, July 9, P.L. 574, No. 139, § 2.

¹ Section 180-7.7 of this title.

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Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180-7.3. (Adm.Code § 477.3). Persons eligible for compensation

(a) Except as provided in subsection (b) of this section, the following persons shall be eligible for compensation:

- (1) A victim.
- (2) An intervenor.
- (3) A surviving spouse, parent or child of a deceased victim or intervenor.
- (4) Any other person dependent for his principal support upon a deceased victim or intervenor.

(b) A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person shall not be eligible to receive compensation with respect to such claim. A member of the family of the person who allegedly committed the crime shall not be eligible under any circumstances.

(c) A person who is not a resident of Pennsylvania at the time of occurrence of the crime upon which the claim is based, shall be eligible for compensation only if the law of the state of which he is a resident at the time of occurrence of the crime upon which the claim is based provides for compensation to Pennsylvania residents who are victims of crime in such state.

(d) If the victim's state of residence provides payments to its residents injured in Pennsylvania, primary responsibility for payment to the victim shall rest with the victim's state of residence.
1929, April 9, P.L. 177, No. 175, § 477.3, added 1976, July 9, P.L. 574, No. 139, § 2.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180-7.4 (Adm.Code § 477.4). Filing of claims for compensation

(a) A claim for compensation may be filed by a person eligible for compensation, as provided in section 477.3 of this act, or, if such person is a minor, by his parent or guardian, or if the person entitled to make a claim is mentally incompetent, by his guardian or such other individual authorized to administer his estate.

(b) A claim must be filed not later than one year after the occurrence of the crime upon which the claim is based, or not later than one year after the death of the victim or intervenor: Provided, however, That for good cause the board may extend the time for filing for a period not exceeding two years after such occurrence.

(c) Claims shall be filed in the office of the secretary of the board or by mail.

(d) Upon filing of a claim pursuant to this act, the board shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within ten days after such notification, such district attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this act until such

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time as a trial verdict has been rendered, and shall so notify such district attorney and claimant. When a trial verdict has been rendered, such district attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to section 477.8 of this act.
1929, April 9, P.L. 177, No. 175, § 477.4, added 1976, July 9, P.L. 574, No. 139, § 2.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180-7.5 (Adm.Code § 477.5). Minimum allowable claim

(a) No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars (\$100) or has lost at least two continuous weeks' earnings or support.

(b) The requirements of subsection (a) shall not apply where the victim was sixty (60) years of age or older at the time the crime occurred.
1929, April 9, P.L. 177, No. 175, § 477.5, added 1976, July 9, P.L. 574, No. 139, § 2. As amended 1979, Dec. 13, P.L. 519, No. 114, § 2, imd. effective.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180-7.6 (Adm.Code § 477.6). Determination of claims

(a) A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims arising from the death of an individual as a direct result of a single crime, shall be considered together by a single board member.

(b) The board member to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(c) Claims shall be investigated and determined, 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 responsibility or other legal exemption or defense.

(d) The board member to whom a claim is assigned may make his recommendation regarding the claim on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the board member is unable to decide his recommendation upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible.

(e) After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the board member to whom the claim was assigned shall make a recommendation to the entire board either granting an award or denying the claim.

(f) The entire board shall act upon the recommendation of the board member. The board, by majority vote, may affirm, increase, decrease or deny the award. No decision shall be valid unless at least two members are in agreement on the decision.

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(g) The secretary of the board shall promptly notify the claimant, the Attorney General and the State Treasurer of the final decision of the board and furnish each with a copy of the report setting forth the decision.
1929, April 9, P.L. 177, No. 175, § 477.6, added 1976, July 9, P.L. 574, No. 139, § 2.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180-7.7 (Adm.Code § 477.7). Judicial review

Within thirty days after receipt of a copy of such report containing a final decision of the board, the claimant or the Attorney General may appeal the final decision of the board in the manner provided for appeals from administrative agencies as provided in the act of June 4, 1945 (P.L. 1388, No. 442), known as the "Administrative Agency Law."¹
1929, April 9, P.L. 177, No. 175, § 477.7, added 1976, July 9, P.L. 574, No. 139, § 2.

¹ Section 1710.1 et seq. of this title. 71 P.S. § 1710.1 et seq.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180-7.8 (Adm.Code § 477.8). Emergency awards

(a) Notwithstanding the provisions of sections 477.6 and 477.9 of this act¹ if it appears to the board member to whom a claim is assigned, that such claim is one with respect to which an award probably will be made, and undue hardship will result to the claimant or claimants if immediate payment is not made, such board member may make an emergency award to the claimant or claimants pending a final decision in the case: Provided, however, That the total amount of such emergency award shall not exceed one thousand dollars (\$1,000) per claim, the amount of such emergency award shall be deducted from any final award made to the claimant or claimants, and the excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant or claimants to the board.

(b) The board member to whom a claim was originally assigned may reconsider an emergency award at any time prior to the final decision in the case and increase previous orders for emergency compensation up to the overall limit of one thousand dollars (\$1,000) per claim.
1929, April 9, P.L. 177, No. 175, § 477.8, added 1976, July 9, P.L. 574, No. 139, § 2.

¹ Sections 180-7.6, 180-7.7 of this title.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180-7.9 (Adm.Code § 477.9). Awards

(a) No award shall be made unless the board or board member, as the case may be, finds by a preponderance of the evidence that:

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(1) A crime was committed.

(2) The person injured or killed was a victim or intervenor as defined in section 477.1

(3) Such crime was promptly reported to the proper authorities; and in no case may an award be made where the record shows that such report was made more than seventy-two hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified. The board, upon finding that any claimant, victim or intervenor has not fully cooperated with all law enforcement agencies, may deny or withdraw any award, as the case may be.

(b) Any award made pursuant to sections 477 to 477.15² shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from such injury. In no case shall the total amount of an award exceed twenty-five thousand dollars (\$25,000).

(c) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this act, be in an amount equal to the actual loss sustained: Provided, however, That no such award shall exceed two hundred dollars (\$200) for each week of lost earnings or support: And, provided further, That the aggregate award for such loss shall not exceed ten thousand dollars (\$10,000) except that in the case of death of a victim or intervenor, the aggregate award shall not exceed fifteen thousand dollars (\$15,000).

(d) If there are two or more persons entitled to an award as a result of the death of a victim or intervenor, the award shall be apportioned among the claimants.

(e) Except for claims involving dismemberment or loss of an eye, any award made pursuant to this act shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury (i) from or on behalf of the person who committed the crime, (ii) under any insurance programs including those mandated by law, (iii) under any contract of insurance wherein the claimant is the insured beneficiary, (iv) from public funds, or (v) as an emergency award pursuant to section 477.8 of this act.³

(f) In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim or intervenor contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or deny the claim altogether in accordance with such determination: Provided, however, That the board or board member, as the case may be, may disregard for this purpose the contribution of the intervenor to his own injury where the record shows that such contribution was attributed to efforts by an intervenor as set forth in section 477.

1929, April 9, P.L. 177, No. 175, § 477.9, added 1976, July 9, P.L. 574, No. 139, § 2. As amended 1979, Dec. 13, P.L. 519, No. 114, § 2, imd. effective.

¹ Section 180-7 of this title.

² Sections 180-7 to 180-7.15 of this title. 71 P.S. §§ 180-7 to 180-7.15.

³ Section 180-7.8 of this title.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

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Index to Notes

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1. In general

Set-off provisions of this section were properly applied to deny benefits to individual who collected insurance proceeds for death of husband, who had been shot and killed while making night deposit for his employer. *Gloeckl v. Com., Pennsylvania Crime Victim's Compensation Bd.*, 425 A.2d 377, Cmwith.1981.

Under subsection (e) of this section, where payments received by claimant as beneficiary under life insurance policies exceeded economic loss sustained by claimant as the result of the death of claimant's husband during a robbery at his place of business, claimant was not entitled to any award of crime victim's compensation. *Hoffman v. Com., Pennsylvania Crime Victim's Compensation Bd.*, 405 A.2d 1110, 46 Pa.Cmwith. 54, 1979.

Phrase "insured beneficiary," as used in subsection (e) of this section, did not mean that only when a claimant was both the insured and the beneficiary under an insurance policy would the proceeds paid under the policy reduce an award of crime victim's compensation; rather, term "insured" was an adjective modifying "beneficiary." *Id.*

By including subsection (e) of this section, the legislature intended that a

claimant who receives insurance proceeds as a result of a victim's injuries or death should have his or her award reduced by the amount of such insurance proceeds, whether the claimant is the insured or the beneficiary. *Id.*

Wife of homicide victim, who as result of her husband's death incurred actual loss of support in excess of \$19,000, was entitled to award of limit under this section of loss of support payment of \$15,000, even though because of her husband's death she would be receiving more money annually in social security payments than she would have received from her husband had he remained alive until 1925 and only thereafter would her annual income decrease as result of her husband's death. *Peterson v. Com., Pennsylvania Crime Victims Compensation Bd.*, 404 A.2d 1364, 45 Pa.Cmwith. 72, 1979.

Crime victim's compensation board had implied authority to defer loss of support payments payable to wife of homicide victim until such time as wife's monthly social security payment fell below amount her husband would have provided. *Id.*

2. Purpose

The program established by the crime victim's compensation statutes was intended by the legislature to compensate innocent victims of crime for economic losses sustained by them for which they received no other compensation. *Hoffman v. Com., Pennsylvania Crime Victim's Compensation Bd.*, 405 A.2d 1110, 46 Pa.Cmwith. 54, 1979.

§ 180—7.10 (Adm.Code § 477.10). Manner of payment

The award shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. No award made pursuant to this act shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. All awards shall be paid by the State Treasurer. An award shall not be considered as compensation taxable as income under Article III, Personal Income Tax, of the act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971," added August 31, 1971 (P.L. 362, No. 93).¹ The board shall reconsider, at least annually, every award being paid in installments. The board may reconsider a claim at any time and modify or rescind previous orders for compensation based upon a change in financial circumstances of a victim or one or more of his surviving dependents.

1929, April 9, P.L. 177, No. 175, § 477.10, added 1976, July 9, P.L. 574, No. 139, § 2.

¹ 72 P.S. § 7301 et seq.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

1. In general

Crime victim's compensation board had implied authority to defer loss of support payments payable to wife of homicide victim until such time as

wife's monthly social security payment fell below amount her husband would have provided. *Peterson v. Com., Pennsylvania Crime Victims Compensation Bd.*, 404 A.2d 1364, 45 Pa.Cmwith. 72, 1979.

§ 180—7.11 (Adm.Code § 477.11). Confidentiality of records

The record of a proceeding before the board or board member shall be a public record: Provided, however, That any record or report obtained by the board or board member, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

1929, April 9, P.L. 177, No. 175, § 477.11, added 1976, July 9, P.L. 574, No. 139, § 2.

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Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180—7.12 (Adm.Code § 477.12). Subrogation

Payment of an award made pursuant to this act shall subrogate the Commonwealth, to the extent of such payment, to any right of action accruing to the claimant or the victim the intervenor to recover losses resulting from the crime with respect to which the award is made. In such case, the Commonwealth shall be entitled to bring an action against the person or persons causing the personal injuries or death for which said payment was made.

If an amount greater than that paid pursuant to these provisions is recovered and collected in such action, the Commonwealth shall pay the balance to the claimant. The Attorney General shall enforce any subrogation.

1929, April 9, P.L. 177, No. 175, § 477.12, added 1976, July 9, P.L. 574, No. 139, § 2.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180—7.13 (Adm.Code § 477.13). Restitution

To the extent that restitution is ordered pursuant to any other existing law, either prior to or subsequent to the making of an award by this board, such restitution shall be paid to the Commonwealth to the extent of the award by the board.

1929, April 9, P.L. 177, No. 175, § 477.13, added 1976, July 9, P.L. 574, No. 139, § 2.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

§ 180—7.14 (Adm.Code § 477.14). Penalty

Any person who asserts a false claim under the provisions of this act shall be guilty of a misdemeanor of the third degree, and shall forfeit any benefit received, and shall reimburse and repay the Commonwealth for payments received or paid on his behalf pursuant to any of the provisions hereof.

1929, April 9, P.L. 177, No. 175, § 477.14, added 1976, July 9, P.L. 574, No. 139, § 2.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180-7 to 180-7.16 of this title are transferred to the Office of General Counsel.

Effective Date: See section 180-7.16 of this title.

Cross References
Classification of crimes, see 18 Pa. C.S.A. § 106.

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§ 180—7.15 (Adm.Code § 477.15). Repealed. 1978, April 28, P.L. 202, No. 53, § 2(a) [1097], effective June 27, 1979

This section, relating to additional costs, was derived from Act 1929, April 9, P.L. 177, § 477.15 as added by Act 1976, July 9, P.L. 574, No. 139, § 2. For disposition of repealed subject matter, see Disposition Table preceding new Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes Annotated.

§ 180—7.16 (Adm.Code § 477.16). Effective date

The provisions of sections 477 through 477.15,¹ inclusive, of this act shall be deemed to be in effect as of October 25, 1976 notwithstanding prior provisions to the contrary. Claims shall be accepted for crimes committed on or subsequent to such date. 1929, April 9, P.L. 177, No. 175, § 477.16, added 1976, Dec. 13, P.L. 519, No. 287, § 2. As amended 1979, Dec. 13, P.L. 519, No. 114, § 3, imd. effective.

¹ Sections 180—7 to 180—7.15 of this title.

Transfer of Powers and Duties

Section 732-502 of this title provides that the powers and duties of the Attorney General and/or the Department of Justice contained in sections 180—7 to 180—7.16 of this title are transferred to the Office of General Counsel.

§ 180—7.17 (Adm.Code § 477.17). Responsibilities of local law enforcement agencies

(a) All local law enforcement agencies shall insure that all of its officers and employees are familiar with crime victim's compensation as provided for in sections 477 through 477.17 of this act.¹ Instruction concerning crime victim's compensation shall be made a part of the training curriculum for all trainee officers.

(b) Local law enforcement agencies shall advise the victims of crimes reported to it of the availability of crime victim's compensation as provided by this act. The term "victim" as used in this subsection shall be a victim as defined by this act. The notice required under this subsection shall be in writing and shall include the following paragraph:

"If you have sustained physical injury as a direct result of a crime of violence, or are legally dependent for support upon a person who has sustained physical injury or death as a direct result of a crime of violence, or, in the event of a death caused by a crime of violence, you have legally assumed or voluntarily paid the medical or burial expenses incurred as a direct result thereof, you may qualify for indemnification by the State of Pennsylvania for the out-of-pocket wages, medical or burial expenses which you have incurred as a result of the crime. Claims must be filed with the Crime Victim's Compensation Board for the State of Pennsylvania. For further information regarding this program, please contact:

(Name, business address and telephone number of the local law enforcement agency)

or

Crime Victim's Compensation Board
Department of Justice
Harrisburg, Pennsylvania

Important: The statute provides that, absent certain extenuating circumstances, a claimant has one year from the date of the crime to file his claim with the Crime Victim's Compensation Board."

(c) The written notification provided for in subsection (b) shall be accompanied by three copies of the application form for crime victim's compensation. These forms shall be supplied by the Crime Victim's Compensation Board to all local law enforcement agencies. The record of the date and address of all letters of notification shall be maintained by every local law enforcement agency.

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(d) Any officer of a local law enforcement agency whose duties include the investigation of crimes may notify victims or their families of the availability of compensation under this act by giving them a card or sheet bearing the paragraph as quoted in subsection (b) above. A record of such personal notice shall be maintained by the local law enforcement agency.

(e) In municipalities which do not have a local law enforcement agency, the board shall by rule establish procedures whereby it, together with the State Police, shall give the notice to victims of crimes as provided in this section.

1929, April 9, P.L. 177, No. 175, § 477.17, added 1979, Dec. 13, P.L. 519, No. 114, § 4, imd. effective.

¹ Sections 180—7 to 180—7.17 of this title.

Effective Date: Section 5 of Act 1979, Dec. 13, P.L. 519, No. 114, provides: "This act shall take effect immediately except that the notice requirements of subsections (b), (c) and (d) of this section shall take effect in three months."

Library References
Criminal Law §1220.
C.J.S. Criminal Law § 2007.

§ 180—7.18 (Adm.Code § 477.18). Distribution of moneys received as a result of the commission of crime

(a) Every person, contracting with any person or the representative or assignee of any person, accused of a crime in this Commonwealth, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so convicted or his representatives. The board shall deposit such moneys in an escrow account for the benefit of and payable to any victim of crimes committed by such person, provided that such victim, within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.

(b) The board, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in each county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section.

(c) Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such person pursuant to this section, the board shall immediately pay over any moneys in the escrow account to such person.

(d) Notwithstanding any inconsistent provision of law and rules of civil procedure with respect to the timely bringing of an action, the five-year period provided for in subsection (a) shall not begin to run until an escrow account has been established.

(e) Notwithstanding the foregoing provisions of this section, the board shall make payments from an escrow account to any person accused of crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

(f) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this Commonwealth. 1929, April 9, P.L. 177, art. IV, § 477.18, added 1982, Dec. 14, P.L. 1213, No. 280, § 1, imd. effective.

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Title 18

§ 1106. Restitution for injuries to person or property

(a) **General rule.**—Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender may be sentenced to make restitution in addition to the punishment prescribed therefor.

(b) **Condition of probation or parole.**—Whenever restitution has been ordered pursuant to subsection (a) and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation or parole.

(c) **Authority of sentencing court.**—In determining whether to order restitution as a part of the sentence or as a condition of probation or parole, the court:

(1) Shall consider the extent of injury suffered by the victim and such other matters as it deems appropriate.

(2) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just, provided that the period of time during which the offender is ordered to make restitution shall not exceed the maximum term of imprisonment to which the offender could have been sentenced for the crime of which he was convicted.

(3) May at any time alter or amend any order of restitution made pursuant to this section providing, however, that the court state its reasons and conclusions as a matter of record for any change or amendment to any previous order.

(d) **Limitations on district justices.**—Restitution ordered by a district justice shall be limited to the return of the actual property or its undisputed dollar amount or, where the claim for restitution does not exceed the civil jurisdictional limit specified in 42 Pa.C.S. § 1515(a)(3) (relating to jurisdiction) and is disputed as to amount, the district justice shall determine and order the dollar amount of restitution to be made.

(e) **Restitution payments and records.**—Restitution, when ordered by a judge, shall be made by the offender to the probation section of the county in which he was convicted according to the order of the court or, when ordered by a district justice, shall be made to the district justice. The probation section and the district justice shall maintain records of the restitution order and its satisfaction and shall forward to the victim the property or payments made pursuant to the restitution order.

(f) **Noncompliance with restitution order.**—Whenever the offender shall fail to make restitution as provided in the order of a judge, the probation section shall notify the court within 20 days of such failure. Whenever the offender shall fail to make restitution within 20 days to a district justice, as ordered, the district justice

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shall declare the offender in contempt and forward the case to the court of common pleas. Upon such notice of failure to make restitution, or upon receipt of the contempt decision from a district justice, the court shall order a hearing to determine if the offender is in contempt of court or has violated his probation or parole.

(g) **Preservation of private remedies.**—No judgment or order of restitution shall debar the owner of the property or the victim who sustained personal injury, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.

(h) **Definitions.**—As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Crime." Any offense punishable under this title or by a district justice.

"Injury to property." Loss of real or personal property, including negotiable instruments, or decrease in its value, directly resulting from the crime.

"Offender." Any person who has been found guilty of any crime.

"Personal injury." Actual bodily harm, including pregnancy, directly resulting from the crime.

"Property." Any real or personal property, including currency and negotiable instruments, of the victim.

"Restitution." The return of the property of the victim or payments in cash or the equivalent thereof pursuant to an order of the court.

"Victim." Any person, except an offender, who suffered injuries to his person or property as a direct result of the crime.

1976, June 18, P.L. 394, No. 86, § 1, effective in 60 days. As amended 1978, April 28, P.L. 202, No. 53, § 7(5), effective June 27, 1978.

Historical Note

The 1978 amendment in subsec. (d), changed heading from "Limitations on justices of the peace", substituted "district justice" for "justice of the peace" in two places, and substituted "the civil jurisdictional limit specified in 42 Pa.C.S. § 1515(a)(3) (relating to jurisdiction)" for "\$1,000"; in subsec. (e) substituted "section" for "department" in two places, substituted "district justice" for "justice of the peace" in three places, and deleted "The probation department and the justice of the peace may assess additional fees to cover administrative costs of collecting payments. Amount and manner of collection shall be established by the probation department or the justice of the peace." after the second sentence;

in subsec. (f) substituted "district justice" for "justice of the peace" throughout and substituted "section" for "department" in first sentence; and in subsec. (h) deleted definitions of "Court" and "Justice of the peace" and added "or by a district justice" to definition of "Crime."

Official Source Note—Act 1978-53:

To give effect to 18 Pa.C.S. § 103, as amended by this act [Act 1978, April 28, P.L. 202, No. 53] and to conform to Title 42. See 42 Pa.C.S. § 1725. Compare act of July 15, 1976 (P.L. 1014, No. 204), § 306 (42 P.S. § 2306), which is repealed by this act.

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Title 42

§ 5903. Compensation and expenses of witnesses

(a) **Scope.**—The provisions of this section apply to a witness served with a subpoena to testify before any government unit (except the minor judiciary) or before the Philadelphia Municipal Court, but do not affect:

(1) The right of a witness who gives expert testimony to receive additional per diem compensation therefor.

(2) The compensation of a witness from another jurisdiction who appears to testify in a criminal proceeding in this Commonwealth by virtue of process issued under the authority of such other jurisdiction.

(b) **Compensation.**—Every witness, except a salaried police officer attending a coroner's inquest during working hours, shall be paid at the rate of \$5 per day during the necessary period of attendance. A witness under the act of March 30, 1937 (P.L. 115, No. 40), known as "The First Class City Permanent Registration Act" ¹ shall be paid at the rate of \$20 per day.

Title 18

SUBCHAPTER B. VICTIM AND WITNESS INTIMIDATION [NEW]

Sec. 4951. Definitions.	Sec. 4954. Protective orders.
4952. Intimidation of witnesses or victims.	4955. Violation of orders.
4953. Retaliation against witness or victim.	4956. Pretrial release.

1980 Amendment: Subchapter B and analysis were added by Act 1980, Dec. 4, P.L. 1097, No. 187, § 4, eff. in 60 days.

§ 4951. Definitions

The following words and phrases when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Victim." Any person against whom any crime as defined under the laws of this State or of any other state or of the United States is being or has been perpetrated or attempted.

"Witness." Any person having knowledge of the existence or non-existence of facts or information relating to any crime, including but not limited to those who have reported facts or information to any law enforcement officer, prosecuting official, attorney representing a criminal defendant or judge, those who have been served with a subpoena issued under the authority of this State or any other state or of the United States, and those who have given written or oral testimony in any criminal matter; or who would be believed by any reasonable person to be an individual described in this definition.

1980, Dec. 4, P.L. 1097, No. 187, § 4, eff. in 60 days.

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§ 4952. Intimidation of witnesses or victims

(a) **Offense defined.**—A person commits an offense if, with the intent to or with the knowledge that his conduct will obstruct, impede, impair, prevent or interfere with the administration of criminal justice, he intimidates or attempts to intimidate any witness or victim to:

(1) Refrain from informing or reporting to any law enforcement officer, prosecuting official or judge concerning any information, document or thing relating to the commission of a crime.

(2) Give any false or misleading information or testimony relating to the commission of any crime to any law enforcement officer, prosecuting official or judge.

(3) Withhold any testimony, information, document or thing relating to the commission of a crime from any law enforcement officer, prosecuting official or judge.

(4) Give any false or misleading information or testimony or refrain from giving any testimony, information, document or thing, relating to the commission of a crime, to an attorney representing a criminal defendant.

(5) Elude, evade or ignore any request to appear or legal process summoning him to appear to testify or supply evidence.

(6) Absent himself from any proceeding or investigation to which he has been legally summoned.

(b) **Grading.**—The offense is a felony of the third degree if:

(1) The actor employs force, violence or deception, or threatens to employ force or violence, upon the witness or victim or, with the requisite intent or knowledge upon any other person.

(2) The actor offers any pecuniary or other benefit to the witness or victim or, with the requisite intent or knowledge, to any other person.

(3) The actor's conduct is in furtherance of a conspiracy to intimidate a witness or victim.

(4) The actor solicits another to or accepts or agrees to accept any pecuniary or other benefit to intimidate a witness or victim.

(5) The actor has suffered any prior conviction for any violation of this title or any predecessor law hereto, or has been convicted, under any Federal statute or statute of any other state, of an act which would be a violation of this title if committed in this State.

Otherwise the offense is a misdemeanor of the second degree.

1980, Dec. 4, P.L. 1097, No. 187, § 4, eff. in 60 days.

§ 4953. Retaliation against witness or victim

(a) **Offense defined.**—A person commits an offense if he harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or victim.

(b) **Grading.**—The offense is a felony of the third degree if the retaliation is accomplished by any of the means specified in section 4952(b) (1) through (5) (relating to intimidation of witnesses or victims). Otherwise the offense is a misdemeanor of the second degree.

1980, Dec. 4, P.L. 1097, No. 187, § 4, eff. in 60 days.

§ 4954. Protective orders

Any court with jurisdiction over any criminal matter may, after a hearing and in its discretion, upon substantial evidence, which may include hearsay or the declaration of the prosecutor that a witness or victim has been intimidated or is reasonably likely to be intimidated, issue protective orders including but not limited to the following:

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(1) An order that a defendant not violate any provision of this subchapter.

(2) An order that a person other than the defendant, including but not limited to a subpoenaed witness, not violate any provision of this subchapter.

(3) An order that any person described in paragraph (1) or (2) maintain a prescribed geographic distance from any specified witness or victim.

(4) An order that any person described in paragraph (1) or (2) have no communication whatsoever with any specified witness or victim, except through an attorney under such reasonable restrictions as the court may impose.

1980, Dec. 4, P.L. 1097, No. 187, § 4, eff. in 60 days.

§ 4953. Violation of orders

Any person violating any order made pursuant to section 4954 (relating to protective orders) may be punished in any of the following ways:

(1) For any substantive offense described in this subchapter, where such violation of an order is a violation of any provision of this subchapter.

(2) As a contempt of the court making such order. No finding of contempt shall be a bar to prosecution for a substantive offense under section 4952 (relating to intimidation of witnesses or victims) or 4953 (relating to retaliation against witness or victim), but:

(i) any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed on conviction of said substantive offense; and

(ii) any conviction or acquittal for any substantive offense under this title shall be a bar to subsequent punishment for contempt arising out of the same act.

(3) By revocation of any form of pretrial release, or the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding him to custody. Revocation may, after hearing and on substantial evidence, in the sound discretion of the court, be made whether the violation of order complained of has been committed by the defendant personally or was caused or encouraged to have been committed by the defendant.

1980, Dec. 4, P.L. 1097, No. 187, § 4, eff. in 60 days.

§ 4956. Pretrial release

(a) Conditions for pretrial release.—Any pretrial release of any defendant whether on bail or under any other form of recognizance shall be deemed, as a matter of law, to include a condition that the defendant neither do, nor cause to be done, nor permit to be done on his behalf, any act proscribed by section 4952 (relating to intimidation of witnesses or victims) or 4953 (relating to retaliation against witness or victim) and any willful violation of said condition is subject to punishment as prescribed in section 4955(3) (relating to violation of orders) whether or not the defendant was the subject of an order under section 4954 (relating to protective orders).

(b) Notice of condition.—From and after the effective date of this subchapter, any receipt for any bail or bond given by the clerk of any court, by any court, by any surety or bondsman and any written promise to appear on one's own recognizance shall contain, in a conspicuous location, notice of this condition.

1980, Dec. 4, P.L. 1097, No. 187, § 4, eff. in 60 days.

Cross References
Conditions of bond, see Pa.R.Crim.P.,
Rule 4014, 42 Pa.C.S.A.

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Title 42

§ 9717. Sentences for offenses against elderly persons

(a) Mandatory sentence.—A person under 60 years of age convicted of the following offenses when the victim is over 60 years of age and not a police officer shall be sentenced to a mandatory term of imprisonment as follows:

18 Pa.C.S. § 2702(a)(1) and (4) (relating to aggravated assault)—not less than two years.

18 Pa.C.S. § 3121 (relating to rape)—not less than five years.

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse)—not less than five years.

18 Pa.C.S. § 3922 (relating to theft by deception)—not less than 12 months, but the imposition of the minimum sentence shall be discretionary with the court where the court finds justifiable cause and that finding is written in the opinion.

(b) Eligibility for parole.—Parole shall not be granted until the minimum term of imprisonment has been served.

1982, Dec. 30, P.L. 1472, No. 334, § 1, effective in 60 days.

Title 62

ARTICLE XII.—DOMESTIC VIOLENCE AND RAPE VICTIMS SERVICES

Article XIII was added by Act 1982, June 18, P.L. 544, No. 157, § 1.

§ 1201. Legislative findings and intent

The General Assembly finds that the public health and safety is threatened by increasing incidences of domestic violence and rape. Domestic violence programs and rape crisis programs provide needed support services for victims and assist in prevention through community education. Therefore the General Assembly finds that it is in the public interest for the Commonwealth to establish a mechanism to provide financial assistance to domestic violence centers and rape crisis centers for the operation of domestic violence and rape crisis programs.

1967, June 13, P.L. 31, art. XII, § 1201, added 1982, June 18, P.L. 544, No. 157, § 1, imd. effective.

Library References
Criminal Law § 1220.
C.J.S. Criminal Law § 2007.

§ 1202. Definitions

As used in this article: "Crime" means an act committed in Pennsylvania which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or defense, would constitute a crime as defined in and proscribed by Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses) or enumerated in the act of April 14, 1972 (P.L. 233, No. 64), known as "The Controlled Substance, Drug, Device and Cosmetic Act." However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this article unless such injury was intentionally inflicted through the use of a motor vehicle.

"Domestic violence" means the occurrence of one or more of the following acts between family or household members:

(1) Intentionally, knowingly, or recklessly causing or attempting to cause bodily injury.

(2) Placing by physical menace another in fear of imminent serious bodily injury.

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"Domestic violence center" means an organization or the coordinating body of an organization which has as its primary purpose the operation of domestic violence programs.

"Domestic violence program" means a program which has as its primary purpose the provision of direct services to victims of domestic violence and their children, including, but not limited to victim advocacy, counseling, shelter, information and referral, victim-witness, accompaniment, community education and prevention.

"Rape crisis center" means an organization, or the coordination body of an organization which has as its primary purpose the operation of rape crisis programs.

"Rape crisis program" means a program which has as its primary purpose the provision of direct services to victims of sexual assault, including, but not limited to, crisis intervention, counseling, victim advocacy, information and referral, victim-witness and assistance, accompaniment through the medical, police and judicial systems as well as providing education and prevention programs on rape and sexual assaults.

"Sexual assault," for purposes of this act, shall constitute any conduct which is a crime under 18 Pa.C.S. Ch. 31 (relating to sexual offenses). 1967, June 13, P.L. 31, art. XII, § 1202, added 1982, June 18, P.L. 544, No. 157, § 1, imd. effective.

135 P.S. § 780-101 et seq.

§ 1203. Additional costs

Where any person after the effective date of this article pleads guilty or nolo contendere to or is convicted of any crime as herein defined, there shall be imposed in addition to all other costs, an additional cost in the sum of ten dollars (\$10) for the purpose of funding the services as described in this article. Such sum shall be paid over to the State Treasurer to be deposited in the General Fund. Under no condition shall a political subdivision be liable for the payment of the ten dollars (\$10) in additional costs.

1967, June 13, P.L. 31, art. XII, § 1203, added 1982, June 18, P.L. 544, No. 157, § 1, imd. effective.

§ 1204. Program grants authorized

The department shall make grants to domestic violence centers and rape crisis centers for the operation of domestic violence programs and rape crisis programs consistent with this article. In awarding grants, the department shall consider the population to be served, the geographical area to be serviced, the scope of the services, the need for services, and the amount of funds provided from other sources.

1967, June 13, P.L. 31, art. XII, § 1204, added 1982, June 18, P.L. 544, No. 157, § 1, imd. effective.

Appropriations: Section 2 of Act 1982, June 18, P.L. 544, No. 157, provides as follows: "The sum of \$1,500,000 is hereby appropriated to the Department of Public Welfare for the fiscal year 1982-1983 for the purpose of funding the programs authorized in section 1204. The department shall not expend more than 7% of the appropriated funds for the administration of this act."

§ 1205. Public review and accountability

The department shall make available at cost to the public copies of applications that have been submitted or approved for funding any reports on any fiscal or programmatic reviews of funded programs.

1967, June 13, P.L. 31, art. XII, § 1205, added 1982, June 18, P.L. 544, No. 157, § 1, imd. effective.

§ 1206. Termination of article

The provisions of this article shall expire five years from the effective date of this article unless reenacted by the General Assembly.

1967, June 13, P.L. 31, art. XII, § 1206, added 1982, June 18, P.L. 544, No. 157, § 1, imd. effective.

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Title 35

PROTECTION FROM ABUSE ACT

§ 10181. Short title

This act shall be known and may be cited as the "Protection From Abuse Act."

1976, Oct. 7, P.L. 1090, No. 218, § 1, effective in 60 days.

Historical Note

Title of Act: An Act relating to abuse of adults and children by a person who resides with them; and providing for remedies and procedures. 1976, Oct. 7, P.L. 1090, No. 218.

Cross References

Child protective services, see 11 P.S. § 2201 et seq.

§ 10182. Definitions

As used in this act:

"Abuse" means the occurrence of one or more of the following acts between family or household members who reside together; or who formerly resided together and both parties continue to have legal access to the residence:

(i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon.

(ii) Placing by physical menace another in fear of imminent serious bodily injury.

(iii) Sexually abusing minor children as defined pursuant to the act of November 26, 1975 (P.L. 438, No. 124), known as the "Child Protective Services Law."

"Adult" means any person 18 years of age or older.

"Court" shall mean the court of common pleas.

"Family or household members" means spouses, persons living as spouses, parents and children, or other persons related by consanguinity or affinity.

Terms not otherwise defined by this act shall have the meaning given to them by the Crimes Code.

As amended 1978, June 23, P.L. 513, No. 81, § 1, effective in 60 days.

11 P.S. § 2201 et seq.

§ 10183. Jurisdiction

The court shall have jurisdiction over all proceedings under this act. The plaintiff's right to relief under this act shall not be affected by his or her leaving the residence or household to avoid further abuse.

1976, Oct. 7, P.L. 1019, No. 218, § 3, effective in 60 days.

§ 10184. Commencement of proceeding

(a) A person may seek relief under this act for himself or herself, or any parent or adult household member may seek relief under this act on behalf of minor children by filing a petition with the court alleging abuse by the defendant.

(b) If the plaintiff files an affidavit stating that he or she does not have funds available to pay the costs of filing and service, the petition shall be filed and service shall be made without payment of costs and leave of court to proceed in forma pauperis shall not be required. When

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the petition is filed without payment of costs, the court shall determine at the hearing on the petition if the plaintiff is indigent. If the court finds that the plaintiff is not indigent the court may order the plaintiff to pay the court costs.

As amended 1978, June 23, P.L. 513, No. 81, § 1, effective in 60 days.

§ 10185. Hearings

(a) Within ten days of the filing of a petition under this act a hearing shall be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. The court shall advise the defendant of his right to be represented by counsel.

(b) The court may enter such temporary orders as it deems necessary to protect the plaintiff or minor children from abuse, upon good cause shown in an ex parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.

(c) If a hearing under subsection (a) is continued, the court may make or extend such temporary orders under subsection (b) as it deems necessary.

1976, Oct. 7, P.L. 1019, No. 218, § 5, effective in 60 days.

§ 10186. Relief

(a) The court shall be empowered to grant any protection order or approve any consent agreement to bring about a cessation of abuse of the plaintiff or minor children, which may include:

(1) Directing the defendant to refrain from abusing the plaintiff or minor children.

(2) Granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff when the residence or household is jointly owned or leased by the parties or is owned or leased by the entirety or is owned or leased solely by the plaintiff.

(3) When the defendant has a duty to support the plaintiff or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the plaintiff of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the plaintiff, or by consent agreement allowing the defendant to provide suitable, alternate housing.

(4) Awarding temporary custody of and/or establishing temporary visitation rights with regard to minor children.

(5) After a hearing in accordance with section 5(a),¹ directing the defendant to pay financial support to such persons as defendant has a duty to support. Such a support order is temporary and any beneficiary of the order must petition for support under the provisions of the Civil Procedural Support Act² within two weeks of the date of the issuance of the protection order. If such a petition is not filed that portion of the protection order requiring the defendant to pay support is void. When there is a subsequent ruling on a petition for support under the Civil Procedural Support Act the portion of the protection order requiring the defendant to pay support becomes void.

(b) Any protection order or approved consent agreement shall be for a fixed period of time not to exceed one year. The court may amend its order or agreement at any time upon subsequent petition filed by either party.

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(c) No order or agreement under this act shall in any manner affect title to any real property.

As amended 1978, June 23, P.L. 513, No. 81, § 1, effective in 60 days.

¹ Section 10185(a) of this title.
² 52 P.S. § 2042.31 et seq. (repealed; see Disposition Table preceding Title 42 Pa.C.S.A.)

Rules of Civil Procedure

Under Pa.R.C.P. No. 1910.30, 42 Pa.C.S.A., this section is not deemed suspended or affected by Rules 1910.1 et seq., relating to actions for support.

Under Pa.R.C.P. No. 1915.24, 42 Pa.C.S.A., this section is not deemed suspended or affected by Rules 1915.1 et seq., relating to actions for custody, partial custody and visitation of minor children.

1. Construction and application
Relief under this act would not be granted where the petition filed appeared to be a tactical tool in marital litigation. *Smith v. Smith*, 18 D. & C.3d 708, 1981.
An order of support may be entered against respondent as part of the court's order under this act, even though petitioner did not pray for support in her petition. *Brookhart v. Brookhart*, 17 D. & C.3d 798, 1981.

§ 10187. Notification

A copy of any order under this act shall be issued to the plaintiff, the defendant and the police department with appropriate jurisdiction to enforce the order or agreement, in accordance with the provisions of this act or as ordered by the court.

As amended 1978, June 23, P.L. 513, No. 81, § 1, effective in 60 days.

Rules of Civil Procedure

Under Pa.R.C.P. No. 1910.30, 42 Pa.C.S.A., this section is not deemed suspended or affected by Rules 1910.1 et seq., relating to actions for support.

Under Pa.R.C.P. No. 1915.24, 42 Pa.C.S.A., this section is not deemed suspended or affected by Rules 1915.1 et seq., relating to actions for custody, partial custody and visitation of minor children.

§ 10188. Emergency relief

(a) When the court is unavailable from the close of business at the end of the week to the resumption of business at the beginning of the week a petition may be filed before a district justice or Philadelphia Municipal Court Judge who may grant relief in accordance with section 6(a), (2) or (3)¹ if the district justice or Philadelphia Municipal Court Judge deems it necessary to protect the plaintiff or minor children from abuse, upon good cause shown in an ex-parte proceeding. Immediate and present danger of abuse to the plaintiff or minor children shall constitute good cause for purposes of this section.

(b) Any order issued under subsection (a) shall expire as of the resumption of business of the court at the beginning of the week or within 72 hours, whichever occurs sooner; at which time, the plaintiff may seek a temporary order from the court.

(c) Any order issued under this section and any documentation in support thereof shall be immediately certified to the court. Such certification to the court shall have the effect of commencing proceedings under section 4² and invoking the other provisions of this act.

As amended 1978, June 23, P.L. 513, No. 81, § 1, effective in 60 days.

¹ Section 10186(a), (2) or (3) of this title.

² Section 10184 of this title.

Rules of Civil Procedure

Under Pa.R.C.P. No. 1910.30, 42 Pa.C.S.A., this section is not deemed suspended or affected by Rules 1910.1 et seq., relating to actions for support.

Under Pa.R.C.P. No. 1915.24, 42 Pa.C.S.A., this section is not deemed suspended or affected by Rules 1915.1 et seq., relating to actions for custody, partial custody and visitation of minor children.

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§ 10189. Procedure

Unless otherwise indicated in this act, any proceeding under this act shall be in accordance with the Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.
As amended 1978, June 23, P.L. 513, No. 81, § 1, effective in 60 days.

Rules of Civil Procedure

Under Pa.R.C.P. No. 1910.30, 42 Pa.C.S.A., this section is not deemed suspended or affected by Rules 1910.1 et seq., relating to actions for support.

Under Pa.R.C.P. No. 1915.24, 42 Pa.C.S.A., this section is not deemed suspended or affected by Rules 1915.1 et seq., relating to actions for custody, partial custody and visitation of minor children.

1. In general
Failure of husband to file exceptions to order directing him to refrain from threats of abuse toward his wife and to keep the peace constituted a waiver of issue whether actions of husband toward his wife fell within the Protection from Abuse Act and, as such, required an affirmation of order on appeal. *Knisely v. Knisely*, 441 A.2d 438, 295 Pa.Super. 240, 1982.

§ 10190. Contempt

(a) Upon violation of a protection order or a court approved consent agreement the court may hold the defendant in indirect criminal contempt and punish him in accordance with law.

(b) Notwithstanding any provision of the law to the contrary any sentence for this contempt may include imprisonment up to six months or a fine not to exceed \$1,000 or both and the defendant shall not have a right to a jury trial on such a charge.

(c) An arrest for violation of an order issued pursuant to this act may be without warrant upon probable cause whether or not the violation is committed in the presence of the police officer. The police officer may verify, if necessary, the existence of a protection order by telephone or radio communication with the appropriate police department.

(d) Subsequent to an arrest the defendant shall be taken without unnecessary delay before the court that issued the order. When that court is unavailable the defendant shall be arraigned before a district justice, or in cities of the first class the municipal court, in accordance with the Rules of Criminal procedure. This section shall not be construed to in any way limit any of the other powers for emergency relief provided in this act.

As amended 1978, June 23, P.L. 513, No. 81, § 1, effective in 60 days.

* * *

§ 5945.1 Confidential communications to sexual assault counselors

(a) Definitions.—As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Rape crisis center." Any office, institution or center offering assistance to victims of sexual assault and their families through crisis intervention, medical and legal accompaniment and follow-up counseling.

"Sexual assault counselor." A person who is engaged in any office, institution or center defined as a rape crisis center under this section, who has undergone 40 hours of training and is under the control of a

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direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.

"Victim." A person who consults a sexual assault counselor for the purpose of securing advice, counseling or assistance concerning a mental, physical or emotional condition caused by a sexual assault.

"Confidential communication." Information transmitted between a victim of sexual assault and a sexual assault counselor in the course of that relationship and in confidence by a means which, so far as the victim is aware, does not disclose the information to a third person other than those who are present to further the interests of the victim in the consultation or those to whom disclosure is reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the sexual assault counselor is consulted. The term includes all information received by the sexual assault counselor in the course of that relationship.

(b) Privilege.—A sexual assault counselor has a privilege not to be examined as a witness in any civil or criminal proceeding without the prior written consent of the victim being counseled by the counselor as to any confidential communication made by the victim to the counselor or as to any advice, report or working paper given or made in the course of the consultation.

1981, Dec. 23, P.L. —, No. 169, § 1, effective in 60 days.

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	33-3212
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Esrow and Forfeiture of Offender Profits	
4. Witness Fees	4-App.X, -2, -5; 34-752
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	33-4434 et seq.
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

PUERTO RICO

Puerto Rico Laws Annotated

§ 3212. Penalty of restitution; manner and form

In addition to the penalty imposed on the person convicted of a crime, the court may impose the penalty of restitution.

The penalty of restitution consists of an obligation imposed by the court on the convicted person to pay to the aggrieved party such damages and losses caused to his person or his property as a result of the criminal act. The penalty of restitution shall not include suffering and mental anguish.

The penalty of restitution imposed may be paid in money through the rendering of services or by returning the goods taken illegally, or their equivalent.

Should the penalty of restitution be paid in money, the amount of the restitution penalty shall be determined by the court within the limits established in this chapter for fines, taking into account the total amount of damages that are to be returned, the pro rata participation of the offender in question, if there were several delinquents participating in the criminal act, the ability of the criminal to pay, and any other circumstance that will allow a fair settlement according to the facts of the case and the convict himself.

For misdemeanors, the penalty of restitution shall not exceed five hundred (500) dollars. For felonies, the penalty of restitution shall not exceed five thousand (5,000) dollars.

The restitution penalty shall be paid immediately. Nevertheless, at the request of the convict and in the court's discretion, it may be paid in full or in installments within thirty (30) days from the date the sentence becomes final.

After the sentence imposing the restitution payment has been pronounced, the court, at the request of the convict, may authorize, in its discretion, the payment or amortization of the restitution or the unpaid part thereof, through free work done by the convict under the supervision and jurisdiction of the correctional system of the Commonwealth of Puerto Rico. Convicts shall be credited \$10.00 for each working day that shall not exceed 8 hours a day.

The Correctional Administration and the Administration of Courts must approve the pertinent regulations to implement the provisions of this section, as to working standards, conditions and places, and supervision, among others. Said regulations shall take into account the convict's regular work schedule.

The court shall keep its jurisdiction over the convict for the purpose of complying with the amortization order thus dictated, including, in pertinent cases, the power to set aside said order, demand total payment of restitution, or in other cases, the unpaid balance thereof.—Penal Code, 1974, § 49A, added June 4, 1980, No. 111, p. 366, § 3, eff. June 4, 1980.

PUERTO RICO

Subsistence of responsibility; civil action.

Section 8 of Act June 4, 1980, No. 111, provided: "This act [which added this section and section 3245a and amended sections 3191, 3201, 3241, 3245 and 3246 of this title] shall not exempt the aggrieved party from civil liability nor shall it prevent said party from suing for damages in a civil suit for the same reasons."

Statement of motives.

Act June 4, 1980, No. 111, contained a statement of motives. See Laws of Puerto Rico 1980, p. 366.

Title 4, App. X

§ 2. Applicability to witnesses

These rules and regulations shall be applicable to all jurors, as well as to prosecution and defense witnesses who appear before the courts of justice in criminal prosecutions, after having been summoned by the court.—Jan. 28, 1971, eff. Feb. 1, 1971.

§ 5. Per diems and mileage

The citizens appearing as witnesses before the courts of justice will be paid per diems at the rate of one dollar fifty cents (\$1.50) for each appearance and ten cents (\$0.10) for each mile covered in each round trip to and from the court, provided the total distance covered exceeds three (3) miles or in defect thereof they will be reimbursed for the trip expenses via ordinary means of transportation.

If the witness comes from Vieques or Culebra he will be paid then at the rate of fifteen cents (\$0.15) per mile or in defect thereof he will be reimbursed for the trip expenses via ordinary means of transportation by land and sea. When it is necessary to move to Puerto Rico a witness residing in the United States or in a foreign country, he will be paid in addition to the reasonable expenses actually incurred, a six dollar (\$6.00) per diem.—Jan. 28, 1971, eff. Feb. 1, 1971.

Title 34

§ 752. Fees for witnesses and jurymen

The Chief Justice of the Supreme Court of Puerto Rico is hereby authorized to prescribe, taking into consideration the sums available in the budget and other essential factors, rules and regulations for the fixing of rates of fees, including per diems and mileage for witnesses and jurymen in the courts of justice of Puerto Rico; Provided, That said fees shall not be less than \$6 for each day of service.—May 10, 1947, No. 338, p. 580, § 1; June 9, 1969, No. 31, p. 47, § 2, eff. July 1, 1969.

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HISTORY

Amendments—1969.

The 1969 Act authorized Chief Justice of the Supreme Court, instead of Secretary of Justice, to prescribe regulations for fixing of rates of fees, and set \$6 per day as minimum limit.

Regulations.

Section 5 of Act June 9, 1969, No. 31, provided: "The existing regulations and standards on this matter shall continue in effect until the Chief Justice prescribes a new regulation by virtue of that provided herein."

Cross references.

Fees and costs continued, see section 304 of Title 4.

§ 4434. Preventing or dissuading witness from attending trial.

Every person who prevents or dissuades a person who is or may become a witness, from attending or offering his testimony in any investigation, proceeding, hearing or judicial or administrative matter, or any other proceeding, authorized by law, shall be punishable by imprisonment not exceeding six months or a fine not exceeding five hundred dollars, or both, in the discretion of the Court.—Penal Code, 1974, § 238.

Fixed sentence system.

Act June 4, 1980, No. 100, repealed the indeterminate sentence system in Puerto Rico, and provided that where a sentence of imprisonment is imposed, a fixed sentence of specific duration is set according to the statute violated. See section 1044 of Title 34.

§ 4435. Practice of fraud or deceit on witnesses

Every person who practices any fraud or deceit for the purpose of affecting the testimony of any witness or any person about to be called as a witness upon any inquiry, suit, hearing or judicial or administrative matter, or any other proceeding authorized by law, or who knowingly makes any statement or declaration or shows any writing to said witness or person for the purpose of unduly affecting his testimony, shall be punishable by imprisonment not exceeding six months or a fine not exceeding five hundred (500) dollars, or both, in the discretion of the Court.—Penal Code, 1974, § 239.

Fixed sentence system.

Act June 4, 1980, No. 100, repealed the indeterminate sentence system in Puerto Rico, and provided that where a sentence of imprisonment is imposed, a fixed sentence of specific duration is set according to the statute violated. See section 1044 of Title 34.

Category	Citation
1. Victim Compensation Program	12-25-1-et seq.
1.1 Responsible Agency	12-25-3
1.2 Eligible Claimants	12-25-3(b), 12-25-6(c)
1.3 Losses Covered	12-25-5
1.4 Minimum and Maximum Award	12-25-6(b)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	12-25-6(a)
1.7 Filing of Claim - Time Limit	12-25-6(a)
1.8 Emergency Award	
1.9 Funding	12-25-12 et seq.
2. Restitution	
2.1 Sentencing Option	12-19-32
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	12-19-34
3. Escrow and Forfeiture of Offender Profits	12-25.1-1 et seq.
4. Witness Fees	9-29-7
5. Victim's Bill of Rights	12-28-1 et seq.
6. Protection from Intimidation	
6.1 Crime Defined	11-32-3 et seq.
6.2 Protective Orders	11-32-6; 12-28-3(3)
7. Victim Notification	
7.1 of Compensation Program	12-28-3(9)
7.2 of Witness Fees	12-28-3(6)
7.3 of Final Disposition	12-28-3(12)
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	12-28-3(4)
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	12-28-6
7.8 of Release of Offender	12-28-3(2),(12); 13-8-9.1 (of release on parole)
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	12-28-3(10)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	12-28-3(11); 12-28-4
8.4 Written Statement at Parole Hearing	12-28-6; 13-8-26
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	12-28-3(7)
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	11-41-15; 12-28-3(8)
11. Victim-Witness Assistance	
11.1 Ombudsmen	12-28-3 13
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	12-28-3(9) (notice of programs)
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	11-5-10 (assault on elderly person)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	11-5-9 (domestic assault, crime defined, notice of rights)
14.1 Protective Orders	15-15-1 et seq., 15-15-3
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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Rhode Island General Laws Title 12

CHAPTER 25

CRIMINAL INJURIES COMPENSATION

SECTION.	SECTION.
12-25-1. Title.	12-25-8. Attorneys' fees.
12-25-2. Definitions.	12-25-9. [Repealed.]
12-25-3. Awarding compensation.	12-25-10. Recovery from offender.
12-25-4. Offenses to which this chapter applies.	12-25-11. Annual reports.
12-25-5. Nature of the compensation.	12-25-12. Violent crimes indemnity fund.
12-25-6. Limitations upon awarding compensation.	12-25-13. Investment of funds.
12-25-7. Terms of the judgment.	12-25-14. Awards made when funds reach certain level.

12-25-1. Title. — This chapter may be cited as the "Criminal injuries compensation act of 1972."

History of Section. As assigned, P.L. 1972, ch. 254, § 1.
Comparative Legislation. Criminal injuries compensation: Conn. Gen. Stat. §§ 54-201 — 54-215. Collateral References. Statutes providing for governmental compensation for victims of crime, 32 A.L.R.3d 1446.

12-25-2. Definitions. — (1) The term "Child" means an unmarried person who is under eighteen (18) years of age and includes a stepchild or an adopted child.

(2) The term "Court" means the superior court.

(3) The term "Dependent" means a person wholly or partially dependent upon the income of the victim at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted and shall include a child of such victim born after the death of such victim.

(4) The term "Personal injury" means actual bodily harm, mental or nervous shock, and a pregnancy resulting from a sexual attack.

(5) The term "Relative" means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, and a spouse's parents.

(6) The term "Victim" means a person who is injured or killed by any act of a person or persons which is within the description of any of the offenses specified in § 12-25-4.

(7) The term "Pecuniary loss" includes:

(A) for personal injury —

- (1) medical expenses (including psychiatric care);
- (2) hospital expenses;

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- (3) loss of past earnings; and
- (4) loss of future earnings because of a disability resulting from the personal injury; and
- (B) for death —
 - (1) funeral and burial expenses; and
 - (2) loss of support to the dependents of the victim.

Pecuniary loss includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage.

History of Section.

As assigned, P.L. 1972, ch. 254, § 1; P.L. 1980, ch. 116, § 1.

12-25-3. Awarding compensation. — (a) In any case in which a person is injured or killed by any act of a person or persons which is within the description of the offenses listed in § 12-25-4, the victim, his guardian, or in the case of his death, a legal representative, may commence in the superior court a civil action against the state of Rhode Island for compensation. In addition to service of a copy of the summons and complaint upon the Attorney General in accordance with Rule 4 of the Rules of Civil Procedure, notice of such action in accordance with the court's direction shall be accorded the person or persons accused of committing said offense, and any such person shall have the right to intervene. The court may render judgment for compensation in accordance with the provisions of this chapter, if such act occurs:

- (1) within the physical confines of the state of Rhode Island; or
- (2) within the maritime jurisdiction of the state of Rhode Island.
- (b) The court may render judgment for compensation:
 - (1) to or on behalf of the injured person, or his guardian; or
 - (2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person; or
 - (3) in the case of the death of the victim, to or for the benefit of the dependents or closest relative of the deceased victim, or any one (1) or more of such dependents or to the legal representative of the victim.

(c) For the purposes of this chapter, a person shall be deemed to have intended an act notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(d) In determining whether to render judgment for compensation and the amount thereof the court may consider any circumstances it

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determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(e) No judgment for compensation may be entered unless the court, without a jury, so directs upon a finding that —

- (1) such an act did occur; and
- (2) the injury or death resulted from such act.

(f) An order may be made under this section whether or not any person is prosecuted or convicted of any offense arising out of such act, or if such act is the subject of any other legal action. Upon application from the attorney general or the person or persons alleged to have caused the injury or death, the court shall suspend proceedings under this chapter until such application is withdrawn or until a prosecution for an offense arising out of such act is no longer pending or imminent. The court may suspend proceedings in the interest of justice if a civil action arising from such act is pending or imminent.

(g) Upon certification by the court, the treasurer of the state of Rhode Island shall pay to the person named in such judgment the amount specified therein and said payments shall be made from the violent crimes indemnity fund and from any federal moneys available.

History of Section.

As assigned, P.L. 1972, ch. 254, § 1; P.L. 1980, ch. 116, § 1.

12-25-4. Offenses to which this chapter applies. — The court may render judgment for compensation in accordance with the provisions of this chapter for personal injury or death which resulted from offenses in the following categories:

- (1) assault with intent to commit murder, robbery or rape;
- (2) assault with a dangerous weapon;
- (3) assault and battery;
- (4) mayhem;
- (5) indecent assault and battery on a child under thirteen (13) years of age;
- (6) arson, or statutory burning;
- (7) kidnapping;
- (8) robbery, or larceny from the person;
- (9) murder;
- (10) manslaughter;
- (11) rape;

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(13) and any other crime, excluding motor vehicle offenses, other than driving under the influence of liquor or drugs which results in personal injury or death.

12-25-5. Nature of the compensation. — The court may render judgment for compensation under this chapter for —

- (a) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;
- (b) pecuniary loss to the dependents of the deceased victim;
- (c) pain and suffering of the victim; and
- (d) any other pecuniary loss resulting from the personal injury or death of the victim, the amount of which the court finds upon the evidence to be reasonable and necessary.

In determining the amount of the judgment, the court may, in its discretion, take into consideration the rates and amounts payable for injuries and death under other statutes of this state and of the United States, and the amount of revenue in the violent crimes indemnity fund and the number and nature of claims pending against it.

History of Section.
As assigned, P.L. 1972, ch. 254, § 1; P.L.
1980, ch. 116, § 1.

12-25-6. Limitations upon awarding compensation. — (a) Actions for compensation under this chapter shall be commenced within two (2) years after the date of the personal injury or death; and no compensation shall be awarded for an injury or death resulting from a crime which was not reported to the appropriate law enforcement authority within ten (10) days of its occurrence.

(b) No compensation shall be awarded under this chapter to the victim, or in the case of death to dependent relatives or to the legal representative, in a total amount in excess of twenty-five thousand dollars (\$25,000) plus such attorney's fee as may be awarded pursuant to § 12-25-8(d).

(c) No compensation shall be awarded if the victim was at the time of the personal injury or death of the victim living with the offender as his wife or her husband or in the situations when the court at its discretion feels unjust enrichment to or on behalf of the offender would result. Compensation under this chapter shall not be awarded to any victim or dependent relative or legal representative if such an award would directly or indirectly inure to the benefit of the offender.

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(d) No interest shall be included in/or added to a judgment under this chapter.

History of Section.
As assigned, P.L. 1972, ch. 254, § 1; P.L.
1980, ch. 116, § 1.

12-25-7. Terms of the judgment. — (a) Except as otherwise provided in this section, any judgment for the payment of compensation under this chapter may be made on such terms as the court deems appropriate.

(b) The court shall deduct from any payments awarded under § 12-25-3 any payments received by the victim or by any of his dependents from the offender or from any person on behalf of the offender, or from the United States (except those received under this chapter), the state of Rhode Island or any state or any of its subdivisions, or from any insurance carrier, for personal injury or death compensable under this chapter, but only to the extent that the sum of such payments and any award under this chapter are in excess of the total compensable injuries suffered by the victim as determined by the court.

History of Section.
As assigned, P.L. 1972, ch. 254, § 1; P.L.
1980, ch. 116, § 1.

12-25-8. Attorneys' fees. — (a) The court shall provide by rules of practice for the compensation of attorneys for appearances and efforts connected with actions for compensation. At the conclusion of proceedings under this chapter, the attorney representing the plaintiff shall file a statement with the court setting forth the amount of fee proposed to be charged in connection with his efforts and services rendered in such proceedings.

(b) After the fee information is filed by an attorney under subsection (a) above, the court shall determine in accordance with such rules of practice, whether such proposed fee is reasonable. If the court initially determines that the proposed fee is unreasonable, the court shall, upon notice to the attorney, determine the amount of a reasonable fee.

(c) Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be subject to disciplinary action and other appropriate action to be taken by the Bar Association of the state of Rhode Island.

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(d) Upon certification by the court to the effect that the fee has been established, the treasurer of the state of Rhode Island shall pay to the attorney named in the certification the amount of the counsel fee which shall be paid from the violent crimes indemnity fund.

History of Section.

As assigned, P.L. 1972, ch. 254, § 1; P.L. 1980, ch. 116, § 1.

12-25-9. Finality of decision. [Repealed.]

Compiler's Notes. This section (as decision, was repealed by P.L. 1980, ch. 116, assigned, P.L. 1972, ch. 254, § 1), finality of § 2.

12-25-10. Recovery from offender. — (a) Whenever any person is convicted of an offense and a judgment for the payment of compensation is or has been entered under this chapter for a personal injury or death resulting from the act constituting such offense, the state of Rhode Island may institute an action against such person for the recovery of the whole or any specified part of the compensation in the superior court of the state of Rhode Island in any county, or in the state or federal court of any other state or district in which such person resides or is found.

(b) Process of the superior court for any county in any action under this section may be served by the sheriff of the county thereof. Whenever it appears to the court in which any action under this section is pending that other parties should be brought before the court in such action, the court may cause such other parties to be summoned.

(c) An order for the payment of compensation under this chapter shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

History of Section.

As assigned, P.L. 1972, ch. 254, § 1; P.L. 1980, ch. 116, § 1.

12-25-11. Annual reports. — The administrator of the superior court shall transmit to the governor and to the general assembly annually a report of the activities of the court under this chapter including the name of each plaintiff, a brief description of the facts in each case, and the amount, if any, of compensation awarded.

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12-25-12. Violent crimes indemnity fund. — It is hereby provided that the general treasurer establish a "Violent crimes indemnity fund" for the purpose of paying the awards decreed by the court as provided herein. The court shall assess as court costs in addition to those provided by law, against all defendants charged with a felony, misdemeanor, or petty misdemeanor, whether or not said crime was a crime of violence and who plead nolo contendere, guilty or who are found guilty of the commission of such crimes as follows:

(a) Where the offense charged is a felony and carries a maximum penalty of five (5) or more years imprisonment, fifty dollars (\$50.00).

(b) Where the offense charged is a felony and carries a maximum penalty of less than five (5) years imprisonment, thirty dollars (\$30.00).

(c) Where the offense charged is a misdemeanor, ten dollars (\$10.00).

Said costs shall be assessed whether or not the defendant is sentenced to prison and in no case shall they be remitted by the court.

History of Section.

As assigned, P.L. 1972, ch. 257, § 1; P.L. 1978, ch. 128, § 1; P.L. 1980, ch. 116, § 1.

12-25-13. Investment of funds. — All moneys assessed as costs against defendants as herein provided shall be paid by the clerks of the district and superior courts to the general treasurer, who shall keep such funds in the violent crimes indemnity fund. The general treasurer may invest such funds in accordance with chapter 10 of title 35, until required for the payment of awards.

History of Section.

As enacted by P.L. 1978, ch. 128, § 2. at the end of the first sentence, substituted "violent crime indemnity fund" for "special fund hereinbefore established."

12-25-14. Awards made when funds reach certain level. — This chapter shall become effective May 9, 1978; provided that the courts shall make no awards of compensation to any victim until the general treasurer has certified to the presiding justice of the superior court that the violent crimes indemnity fund has reached the sum of one hundred thousand dollars (\$100,000).

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12-19-32. Restitution. — In addition to or in lieu of any nonmandatory sanction imposed as part of a sentence or as a condition of probation, a judge at the time of sentencing may order restitution which may be in the form of monetary payment or some type of community service.

12-19-34. Restitution payments. — If a person, pursuant to §§ 12-19-32 or 12-19-33 is ordered to make restitution in the form of monetary payment, the court may order that it shall be made through the administrative office of state courts which shall record all payments and pay the money to the person injured in accordance with such order or with any modification thereof.

CHAPTER 25.1 CRIMINAL ROYALTIES

SECTION.		SECTION.	
12-25.1-1.	Title.	12-25.1-6.	Return of monies to criminally responsible person.
12-25.1-2.	Definitions.	12-25.1-7.	Statute of limitations.
12-25.1-3.	Confiscation of criminal royalties — Criminal royalties fund — Priority of claims against criminal-royalties fund.	12-25.1-8.	Public notice.
12-25.1-4.	Awards of compensation from the criminal royalties fund.	12-25.1-9.	Legal expenses of criminally responsible person.
12-25.1-5.	Attorneys' fees.	12-25.1-10.	Subterfuge.
		12-25.1-11.	Failure to comply.
		12-25.1-12.	Severability.

12-25.1-1. Title. — This chapter may be cited as the "Criminal Royalties Distribution Act of 1983."

History of Section.
P.L. 1983, ch. 328, § 1.
Compiler's Notes. P.L. 1983, ch. 328, § 2 provides that this chapter takes effect upon

passage (May 21, 1983) and applies to all moneys and other compensation paid or payable after the date of passage.

12-25.1-2. Definitions. — For purposes of this chapter:

(a) The term "child" means an unmarried person who is under eighteen (18) years of age and includes a stepchild or an adopted child.

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(b) The term "commercial exploitation" means any publication, reenactment, dramatization, interview, depiction, explanation or expression through any medium of communication which is undertaken for financial consideration. The term includes, but is not limited to, a movie, book, magazine or newspaper article, tape recording, still photograph, radio or television program, live presentation, or reproduction or presentation of any kind.

(c) The term "court" means the superior court.

(d) The term "criminally responsible person" means a person who has been convicted of a felony committed within the state of Rhode Island which caused another person to suffer personal injury or loss of property, or who has been adjudicated not guilty by reason of insanity after a trial on a charge of such offense, or who has voluntarily admitted the commission of such offense.

(e) The term "convicted", as used in this chapter only, means a person who has entered a plea of guilty or nolo contendere to a charge of such offense, regardless of the fine, sentence or other punishment imposed or who has been found guilty after a trial on a charge of such offense.

(f) The term "alleged criminally responsible person" means a person who has been indicted or against whom a criminal information has been proffered for the commission of a felony committed within the State of Rhode Island which caused another person to suffer personal injury or loss of property but who has not yet been either convicted or acquitted of said charge nor had said charge dismissed.

(g) The term "dependent" means a person wholly or partially dependent upon the income of the victim at the time of his death or would have been so dependent but for the incapacity due to the injury from which the death resulted and shall include a child of such victim born after the death of such victim.

(h) The term "personal injury" means actual bodily harm, mental or nervous shock, or a pregnancy.

(i) The term "relative" means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, and a spouse's parents.

(j) The term "victim" means a person who suffers personal injury or loss of property as a direct result of the conduct of another person in perpetration of a criminal offense.

(k) The term "pecuniary loss" includes:

(1) for personal injury —

(a) medical expenses (including psychiatric care);

(b) hospital expenses;

(c) loss of past earnings; and

(d) loss of future earnings because of a disability resulting from personal injury; and

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- (2) for death —
- (a) funeral and burial expenses; and
- (b) loss of support to the dependents of the victim.

Pecuniary loss includes also any other expenses actually and necessarily incurred as a result of the personal injury or death.

History of Section.

P.L. 1983, ch. 328, § 1.

Compiler's Notes. The word "chapter" in

the introductory phrase was substituted for "section" by the compiler.

12-25.1-3. Confiscation of criminal royalties — Criminal royalties fund — Priority of claims against criminal royalties fund. — (A) Every person, firm, corporation, partnership, association or other legal entity contracting with a criminally responsible person or alleged criminally responsible person or with the legal representative or assignee of such person regarding the commercial exploitation of the events and circumstances constituting and/or surrounding and/or motivating the crime or alleged crime shall submit a copy of such contract, within ten (10) days of the making thereof, to the general treasurer and shall pay over to the general treasurer, within ten (10) days of it becoming due and payable, any and all monies or other compensation which would otherwise by the terms of such contract be due and payable to or distributed at the direction of such person. All rights, causes of action or other entitlements accruing to any criminally responsible person or alleged criminally responsible person or the legal representative or assignee of such person for said commercial exploitation shall inure to and be enforceable by the general treasurer for the benefit of the "criminal royalties fund" established by this chapter.

(B) All monies paid to or recovered by the general treasurer pursuant to subsection (A) shall be collectively known as the "criminal royalties fund." Except as required for payment of awards under this chapter, the general treasurer shall manage and invest the criminal royalties fund in accordance with § 35-10-11.

(C) Claims against any portion of the criminal royalties fund attributable to a specific criminally responsible person shall have the following priorities:

(1) claims by the state for costs incurred in providing defense counsel for the criminally responsible person by means of the public defender or a court appointed attorney;

(2) claims by the state and its political subdivisions for costs incurred in the investigation of the crime and the prosecution and trial of the criminally responsible person;

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(3) claims by the victim or victims of the criminally responsible person pursuant to § 12-25.1-4;

(4) claims by the state pursuant to § 12-25-10;

(5) civil judgments in favor of the victim or victims of the criminally responsible person;

(6) after claims arising under subparagraphs (1) through (5) have been resolved and the statute of limitations for such claims has expired, one-half (½) of the remainder of the funds attributable to a specific criminally responsible person shall be transferred to the "violent crimes indemnity fund" established by § 12-25-12;

(7) claims by other creditors of the criminally responsible person; and

(8) claims by the criminally responsible person or persons claiming through him or her.

Claims against the criminal royalties fund shall be made against the portion of the fund attributable to the specific criminally responsible person and not against the fund as a whole. No payment shall be made out of the fund when such payment would be in derogation of claims, either present or pending, entitled to a higher priority under this subsection. The general treasurer may bring an action of interpleader or an action for a declaratory judgment where he cannot determine the priority of claims and the proper disposition of funds. Monies in the fund shall not be subject to execution, levy, attachment or lien except in accordance with the priorities set forth in this subsection. Any party aggrieved by a final determination and order of the general treasurer arising from his administration of the "Criminal Royalties Fund" may seek judicial review of such decision pursuant to chapter 35 of title 42.

History of Section.

P.L. 1983, ch. 328, § 1.

12-25.1-4. Awards of compensation from the criminal royalties fund. — (A) A victim, his or her guardian, or in the case of a deceased victim, his or her legal representative, within three (3) years of the last payment to or recovery by the criminal royalties fund of monies attributable to the criminally responsible person whose portion of the fund is to be charged, may petition the court for compensation from such portion of the fund. Notice of such action shall be accorded the criminally responsible person in the manner and in the form prescribed by the court after filing of the petition. In the event that the whereabouts of such criminally responsible person are neither known nor discoverable through diligent and reasonable inquiry, such circumstance shall be made a matter of record by affidavit to the court. The criminally responsible person whose portion of

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the fund is to be charged shall have the right to contest any petition pursuant to this section.

(B) No award of compensation may be entered unless the court, sitting without a jury, finds that:

(1) the victim did suffer personal injury or loss of property as a result of conduct in this state in perpetration of a criminal offense by the criminally responsible person whose portion of the fund is to be charged;

(2) that the victim was not a co-conspirator with or an accessory to such criminally responsible person in the perpetration of such criminal offense;

(3) that such person whose portion of the fund is to be charged has been convicted of said criminal offense or otherwise determined to be the criminally responsible person within the meaning of this chapter; and

(4) the portion of the criminal royalties fund sought to be charged is attributable to the criminally responsible person shown to have caused the victim's personal injury.

(C) The court may award compensation:

(1) to or on behalf of the victim, or his guardian; or

(2) in the case of the personal injury of the victim, where the compensation is for pecuniary loss suffered or expenses incurred by any person responsible for the maintenance of the victim, to that person; or

(3) in the case of the death of the victim, to or for the benefit of the dependents or closest relative of the deceased victim, or any one or more of such dependents or to the legal representative of the victim.

An award of compensation shall be limited to:

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) pecuniary loss to the personally injured victim or the dependents of the deceased victim;

(3) pain and suffering of the personally injured victim;

(4) any other pecuniary loss resulting from the personal injury or death of the victim, the amount of which the court finds upon the evidence to be reasonable and necessary; and

(5) the amount of the fair market value of the lost or stolen property.

In determining the amount of an award, the court may consider any circumstances it determines to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death or loss of property, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or

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to apprehend a criminally responsible person. No interest shall be included in or added to an award of compensation under this chapter. No compensation shall be awarded if the victim was at the time of the personal injury or death or loss of property of the victim living with the criminally responsible person as his wife or her husband or in other situations, when the court, at its discretion, feels unjust enrichment to or on behalf of the criminally responsible person would result. Compensation under this chapter shall not be awarded to any victim or dependent relative or legal representative if such an award would, directly or indirectly, inure to the benefit of the criminally responsible person.

(D) Upon certification by the court, the general treasurer shall pay to the person named in the award the amount specified therein from the appropriate portion of the criminal royalties fund.

12-25.1-5. Attorneys' fees. — At the conclusion of the proceedings under § 12-25.1-4, the attorney representing a claimant who has received an award of compensation shall file a statement with the court setting forth the amount of fee proposed to be charged in connection with his efforts and services rendered in such proceedings. After the fee information is filed by said attorney, the court shall determine whether such proposed fee is reasonable. If the court initially determines that the proposed fee is unreasonable, the court shall, upon notice to the attorney, determine the amount of a reasonable fee. Upon certification by the court to the effect that the fee has been established, the general treasurer shall pay to the attorney named in the certification the amount of the counsel fee which shall be paid from the appropriate portion of the criminal royalties fund. Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be subject to disciplinary action and other appropriate action to be taken by the supreme court of the state of Rhode Island.

History of Section.
P.L. 1983, ch. 328, § 1.

12-25.1-6. Return of monies to criminally responsible person. — (A) No funds attributable to a specific alleged criminally responsible person shall be distributed unless and until that person is determined to be criminally responsible as defined in this chapter. Immediately upon the dismissal of charges or the acquittal of such person for the crime which was the subject of the commercial exploitation, all funds recovered by the general treasurer attributable to such person shall be paid to him or her together with any interest which accrued thereon.

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(B) Subject to the disposition of all claims and pending claims which have been brought against said funds attributable to the criminally responsible person, he or she may recover the remainder of said funds pursuant to subsection (8) of § 12-25.1-3 three (3) years and six (6) months following the last payment to or recovery by the general treasurer of said funds.

History of Section.
P.L. 1983, ch. 328, § 1.

12-25.1-7. Statute of limitations. — Notwithstanding any inconsistent provision of the general or public laws with respect to the timely bringing of an action, all claims brought against the criminal royalties fund shall be brought within three (3) years of accrual or three (3) years of the last payment to or recovery by the general treasurer of funds or other compensation attributable to the criminally responsible person, whichever is later.

History of Section.
P.L. 1983, ch. 328, § 1.

12-25.1-8. Public notice. — The general treasurer, at least once every six (6) months for three (3) years from the date he receives such moneys, shall cause to have published a legal notice in a newspaper of general circulation in the state advising potential claimants that such funds are available to satisfy money judgments pursuant to this chapter. The general treasurer may, in his discretion, provide for such additional notice as he deems necessary. The expenses of such advertisements shall be charged against the appropriate portion of the fund.

History of Section.
P.L. 1983, ch. 328, § 1.

12-25.1-9. Legal expenses of criminally responsible person. — Notwithstanding any other provision of this chapter, the general treasurer shall make payments from the portion of the criminal royalties fund attributable to a criminally responsible person to such person upon order of the court after a showing that such monies shall be used exclusively for the purpose of retaining legal representation at any stage of the criminal proceedings against such person with respect to the events or conduct being the subject of the commercial exploitation giving rise to the monies paid to or recovered by the criminal royalties fund, Provided, however, That the total of all payments made pursuant to this section shall not exceed twenty percent (20%) of the total monies in the applicable portion of the criminal royalties fund.

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12-25.1-10. Subterfuge. — Any action taken by or on behalf of any criminally responsible person to circumvent, impede, or frustrate the purpose of this chapter shall be null and void.

12-25.1-11. Failure to comply. — Every person, firm, corporation, partnership, association or other legal entity which enters into a contract within the scope of § 12-25.1-3 but fails to comply with the provisions of this chapter shall be liable to the state of Rhode Island "Criminal Royalties Fund" for double the amount which said person or entity should have paid over to the general treasurer pursuant thereto.

History of Section.
P.L. 1983, ch. 328, § 1.

12-25.1-12. Severability. — If any of the provisions of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable.

Title 9

9-29-7. Witness fees. — The fees of witnesses shall be:
For every day's attendance before the supreme or superior court, or before any other tribunal or magistrate, including attendance in giving depositions \$10.00
For every mile's travel10
For every day's commitment in jail upon default to enter into recognizance with surety 2.00
In addition to the fees above provided, witnesses summoned and testifying as experts in behalf of the state, or any person acting as an interpreter, before the supreme, superior, or district court, may be allowed and paid such sum as such court may deem just and reasonable.

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Title 12

CHAPTER 28 RIGHTS OF THE VICTIM

SECTION.		SECTION.	
12-28-1.	Title.	12-28-5.	Civil judgment against defendant.
12-28-2.	Legislative purpose.	12-28-6.	Victim's right to address parole board.
12-28-3.	Rights of the victim during investigation and prosecution of the crime.	12-28-7.	Noncompliance not affecting validity of conviction, sentence or parole.
12-28-4.	Victim's right to address court prior to sentencing.	12-28-8.	Severability.

12-28-1. Title. — This chapter may be cited as the "Victim's Bill of Rights."

History of Section.
P.L. 1983, ch. 265, § 1.

12-28-2. Legislative purpose. — In recognition of the responsibility of the community to the victims of crime, the general assembly declares its intent to ensure (1) that all such victims are treated with dignity, respect and sensitivity at all phases of the criminal justice process; (2) that whenever possible they receive financial compensation for their injury or loss from the perpetrator of the crime; and (3) that the full impact of the crime upon the victim is brought to the attention of the court.

12-28-3. Rights of the victim during investigation and prosecution of the crime. — Upon the request of each victim of a felony offense who makes a timely report of the crime and who cooperates with law enforcement authorities in the investigation and prosecution thereof shall have the following rights:

(1) To be notified periodically by law enforcement authorities of the status of the investigation until such time as the alleged perpetrator is apprehended or the investigation closed.

(2) To be notified by law enforcement authorities of the arraignment of the alleged perpetrator before a court empowered to set bail; and to be informed of the release of the alleged perpetrator on bail or personal recognizance.

(3) To receive protection from harm and threats of harm arising out of the victim's cooperation with law enforcement and prosecution efforts, and to be provided with information as to the means of protection available.

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(4) To be notified of all court proceedings at which the victim's presence is required in a reasonable amount of time prior to the proceeding, and to be notified of the cancellation of any scheduled court proceeding in sufficient time to prevent an unnecessary appearance at the courthouse.

(5) To be provided, whenever feasible, with a secure waiting area during court proceedings that does not require the victim to be in close proximity to the defendant and the family and friends of the defendant.

(6) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which the victim is entitled.

(7) To be provided with appropriate employer intercession services to ensure that the employer of the victim will cooperate with the criminal justice process in order to minimize the employee's loss of pay and other benefits resulting from court appearances.

(8) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence.

(9) To be informed of financial assistance and other social services available to crime victims and the manner of applying therefor. All eligible victims shall be informed of the existence of the criminal injuries compensation fund and the manner of applying therefor.

(10) To be consulted by the administrator of probation and parole in the course of his preparation of the presentence report and to have included in said report a statement regarding the impact which the defendant's criminal conduct has had upon the victim.

(11) To be afforded the right to address the court prior to sentencing in those cases where the defendant has been adjudicated guilty following a trial by jury.

(12) To be informed of the disposition of the case against the alleged offender.

(13) To be notified whenever the defendant or perpetrator is released from custody. When release is ordered prior to final conviction, said notice to the victim shall be given by the department of attorney general. When release is granted subsequent to final conviction, said notice to the victim shall be given by the parole board.

The rights afforded to the victim of a crime by this section shall upon request be afforded as well to the immediate families of homicide victims.

Unless otherwise specified, it shall be the responsibility of the department of attorney general to make certain that the victim receives such notification as is required by this section.

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12-28-4. Victim's right to address court prior to sentencing.

— Prior to imposition of sentence upon a defendant who has been adjudicated guilty of a felony in a jury trial, the victim of said criminal offense shall upon request be afforded the opportunity to address the court regarding the impact which the defendant's criminal conduct has had upon the victim. The victim shall upon request be permitted to speak prior to counsel for the state and the defendant making their sentencing recommendations to the court and prior to the defendant's exercise of his right to address the court.

For the purposes of this section, a victim is one who has sustained personal injury or loss of property directly attributable to the felonious conduct of which the defendant has been convicted. In homicide cases, a member of the immediate family of the victim shall upon request be afforded the right created by this section.

History of Section.
P.L. 1983, ch. 265, § 1.

12-28-5. Civil judgment against defendant. — Upon his final conviction of a felony after a trial by jury, a civil judgment shall automatically be entered by the trial court against the defendant conclusively establishing his liability to the victim for such personal injury and/or loss of property as was sustained by the victim as a direct and proximate cause of the felonious conduct of which the defendant has been convicted. The court shall notify the victim at his last known address of the entry of the civil judgment in his favor and inform him that he must establish proof of damages in an appropriate judicial proceeding in order to recover for his injury or loss. This section shall not apply to crimes set forth in title 31 arising from the operation of a motor vehicle.

For the purposes of this section, a victim is one who has sustained personal injury or loss of property directly attributable to the felonious conduct of which the defendant has been convicted. In homicide cases, judgment shall enter for the benefit of those parties eligible to commence a wrongful death action pursuant to chapter 7 of title 10.

History of Section.
P.L. 1983, ch. 265, § 1.

12-28-6. Victim's right to address parole board. — Prior to acting upon the petition of an inmate at the adult correctional institution or the women's reformatory, the parole board shall upon request notify the victim of the criminal conduct for which said inmate has been incarcerated of the pendency of the proceedings before the board. The victim shall upon request be afforded the opportunity to

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address the board regarding the impact of the crime upon the victim.

For the purposes of this section, a victim is one who has sustained personal injury or loss of property directly attributable to the criminal conduct for which the inmate has been incarcerated. In homicide cases, a member of the immediate family of the victim shall upon request be afforded the right created by this section.

History of Section.
P.L. 1983, ch. 265, § 1.

12-28-7. Noncompliance not affecting validity of conviction, sentence or parole. — Failure to afford the victim of a felony offense any of the rights established by this chapter shall not constitute grounds for vacating an otherwise lawful conviction, or for voiding an otherwise lawful sentence or parole determination.

History of Section.
P.L. 1983, ch. 265, § 1.

12-28-8. Severability. — If any of the provisions of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid

Title 11

11-32-3. Obstruction of the judicial system. — Whoever corruptly, maliciously, recklessly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror or officer in or of any court of this state, or officer who may be serving at any examination or other proceeding before any justice, master or other officer of said court, in the discharge of his duty, or injures any party on his person or property on account of his attending or having attended such court or examination before such justice, master or other officer, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such justice, master, or other officer in his person or property on account of the performance of his official duties, or corruptly, maliciously, recklessly or by threats or force, or by any threatening letter or communication, influences, obstructs or impedes, or endeavors to

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influence, obstruct or impede, the due administration of justice, shall be fined not more than five thousand dollars (\$5,000) or imprisoned not more than five (5) years, or both.

History of Section.

As enacted by P.L. 1977, ch. 193, § 1; P.L. 1980, ch. 91, § 1.

11-32-4. Definitions. — For the purposes of this chapter, the following terms shall mean:

(a) "Malice" means an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

(b) "Witness" means any natural person,

(1) having knowledge of the existence or nonexistence of facts relating to any crime, or

(2) whose declaration under oath is received or has been received as evidence for any purpose, or

(3) who has reported any crime to any peace officer, prosecutor, probation or parole officer, correctional officer or judicial officer, or

(4) who has been served with a subpoena issued under the authority of any court in the state, or of any other state or of the United States, or

(5) who would be believed by any reasonable person to be an individual described in subdivisions (1), (2), (3), or (4), hereof.

(c) "Victim" means any natural person against whom any crime as defined under the laws of this state or any other state or of the United States is being or has been perpetrated or attempted to be perpetrated.

11-32-7. Pretrial release. — (a) Any pretrial release of any defendant, whether on bail or under any other form of recognizance, shall be deemed, as a matter of law, to include a condition that the defendant neither do, nor cause to be done, nor knowingly permit to be done on his behalf, any act proscribed in this chapter hereof.

(b) Every person who willfully violates this condition of pretrial release is subject to revocation of same and for the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding him into custody whether or not the defendant was the subject of an order under § 11-32-6.

(c) From and after May 8, 1980, any receipt for any bail or bond given by any court, by any surety or bondsman and/or any written promise to appear on one's own recognizance shall contain, in a conspicuous location, notice of this section.

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CHAPTER 33

PERJURY AND FALSE SWEARING

SECTION.

11-33-1. Perjury.

11-33-2. Penalty for perjury.

11-33-3. Attempt to procure perjury.

11-33-4. False swearing pertaining to sale or conveyance of property.

SECTION.

11-33-5. Manner of proof.

11-33-6. Perjury before general assembly committees.

11-32-5. Intimidation of witnesses and victims of crimes. —

(a) Any person who, by expressly or impliedly threatening to commit any unlawful act, maliciously and knowingly communicates with another person with the specific intent to intimidate a victim of a crime or a witness in any criminal proceeding with respect to that person's participation in any criminal proceeding shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500) or imprisoned not more than one year, or both.

(b) Any person who, with the specific intent to intimidate a victim of a crime or a witness in any criminal proceeding with respect to that person's participation in any criminal proceeding, causes a physical injury to or damages the property of any person or expressly or impliedly threatens to cause physical injury to or damage to the property of any person, or, with the aforementioned specific intent to intimidate, acts for pecuniary gain shall be guilty of a felony and upon conviction thereof shall be fined not more than five thousand dollars (\$5,000) or imprisoned not more than five (5) years, or both.

(c) As used in this section, "criminal proceeding" shall mean the filing of a criminal complaint, any grand jury proceedings, any trial or hearing conducted in any court relating to a criminal matter, any proceeding before the parole board or any official inquiry into an alleged criminal violation.

(d) Nothing herein contained shall be construed to prevent an attorney from interviewing any witness or victim or from otherwise investigating a matter on behalf of a client in an otherwise lawful manner.

11-32-6. Jurisdiction of district, superior and family courts. —

(a) Any court with jurisdiction over any criminal matter, including the family court when it has jurisdiction of a juvenile by virtue of a

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wayward or delinquent petition alleging the violation of any criminal statute of the state of Rhode Island may, in its discretion, upon good cause (which may include, but is not limited to, credible hearsay or the declaration of the prosecutor or defense attorney) that intimidation or dissuasion of any person who is a victim or who is a witness, has occurred or is reasonably likely to occur, issue orders including, but not limited to, the following:

(1) An order that a defendant not violate any provision of this chapter.

(2) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of said court, not violate any provisions of this chapter.

(3) An order that any person described in this subsection maintain a prescribed geographic distance from any specified witness or victim.

(4) An order that any person described in this subsection have no communication whatsoever with any specified witness or any victim, except through an attorney under such reasonable restrictions as the court may impose.

(5) An order calling for a hearing to determine if an order as described in (1) through (4) should be issued.

(6) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim and/or witness.

(b) Every person violating any order made pursuant to subsection (a) may be punished in any or all manner as follows:

(1) For any substantive offense described in § 11-32-5.

(2) As a contempt of the court making such order. No finding of contempt shall be a bar to prosecution for a substantive offense under § 11-32-5, but any conviction or acquittal for any substantive offense under § 11-32-5 shall be a bar to subsequent punishment for contempt arising out of the same act.

(3) By revocation of any form of pretrial release and/or the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding him into custody, said revocation may, after a hearing and, upon showing by clear and convincing evidence, in the sound discretion of the court, be made whether the violation order complained of has been committed by the defendant, personally, or in any way caused or encouraged to have been committed by said defendant.

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Title 13

13-8-9.1. Notification upon release. — The parole board shall, immediately prior to the release of any prisoner on parole, notify the victim of the crime committed by the prisoner, if any be identified, and shall further notify the police department in the community where the crime for which the prisoner was sentenced was committed, and the police department in the community where the prisoner was residing at the time of the commission of such offense, and the police department in the community where the prisoner will be residing upon his release.

* * *

13-8-26. Statements by interested individuals or families. — All individuals, members of the family, friends, legal counsel, agencies or other interested persons desiring to make a statement with respect to a particular applicant for parole shall submit it in writing for inclusion in the applicant's folder as provided in § 13-8-6.

* * *

Title 11

11-41-15. Recovered stolen property. — (a) The officer who shall apprehend any person as principal or accessory in any robbery or larceny, shall secure the property alleged to be stolen and shall be answerable to the same, and he shall annex a schedule thereof to his return. Upon receipt of the above property from the apprehending officer, the clerk or person in charge of the storage of alleged stolen property for a police department shall enter into a book a description of every article of property alleged to be stolen which was brought to the police department and shall attach a number to each article.

(b) The clerk or person in charge of the storage of alleged stolen property may deliver the property to the owner of such property upon satisfactory proof of ownership, provided that the following steps are followed:

(1) A complete photographic record of the property is made;

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(2) The person from whom custody of the property was taken is served with a notice of the claim of ownership and is given a reasonable opportunity to be heard as to why the property should not be delivered to the person claiming ownership;

(3) A signed declaration of ownership under penalty of perjury is obtained from the person to whom the property is delivered.

The delivery of property to the owner shall be without prejudice to the state or any other person who may have a claim to the property. Any property subject to forfeiture under any provision of law shall not be returned pursuant to this section.

(c) Upon application to the superior court by the person from whom custody of the property was taken, a review of the determination of the clerk or the person in charge of the storage of alleged stolen property shall be made within thirty (30) days of the receipt of such application. The court shall have the power to order the property taken into the custody of the court upon a finding that the person to whom the property was delivered was not entitled to it.

(d) The clerk or person in charge of the storage of alleged stolen property shall not be liable for damages for any official act performed in good faith in the course of carrying out the provisions of this section.

(e) The photographic record of the alleged stolen property required by subsection (b) (1) above shall be allowed to be introduced as evidence in any court of this state in place of the actual alleged stolen property.

* * *

11-5-10. Assault on persons 60 years of age or older. — Any person who shall commit an assault and battery upon a person sixty (60) years of age or older causing bodily injury shall be deemed to have committed a felony and shall be imprisoned not exceeding five (5) years or fined not exceeding one thousand dollars (\$1,000) or both.

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11-5-9. Domestic assault — Procedure — Victim to be informed of rights. — (A) Where an act of simple assault as defined in § 11-5-3 occurs between adult parties who reside in the same household or are husband and wife, it shall be deemed domestic assault and shall be punishable by imprisonment by not more than one (1) year or by a fine of not more than five hundred dollars (\$500) or both.

Notwithstanding the relationship of the parties, the jurisdiction over this misdemeanor shall be in the district court.

Nothing in this section shall be construed to limit the effect of any other criminal statute.

Any arrest made without a warrant under this section must so be made within twenty-four (24) hours after the commission of the misdemeanor.

(B) Whenever a law enforcement officer has reason to believe that a domestic assault has been committed, he shall explain to the victim of that assault his rights and hand to that person a copy of the following statement:

You have the right to file a criminal complaint for threats, domestic assault, assault with a deadly weapon, assault with intent to kill, or other related crimes.

If you are in need of medical treatment, you have the right to demand that the officer present drive you to the nearest hospital or otherwise assist you.

If you believe that police protection is needed for your physical safety, you have the right to demand that the officer present remain at the scene until you and your children can leave or until your safety is otherwise obtained.

If you and your attacker are legally married, should you file for absolute divorce or for bed and board divorce, you would have the right to petition the family court requesting any of the following orders for relief.

(1) an order restraining your attacker from abusing you or your minor child;

(2) an order awarding you exclusive use of your marital domicile;

(3) an order awarding you custody of your minor child;

(4) an order directing your attacker to pay support for you or any minor child in your custody if your attacker has a legal obligation to support them;

(5) an order directing your attacker to pay your attorney's fees.

Irrespective of whether you are married to your attacker or you choose to file for divorce, you have the right to go to the district court and file a private complaint requesting the court to issue a peace bond requiring your attacker to refrain from abusing you.

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Title 15

CHAPTER 15
DOMESTIC ABUSE PREVENTION

SECTION.

- 15-15-1. Definitions.
15-15-2. Filing of complaint.
15-15-3. Protective orders — Penalty — Jurisdiction.
15-15-4. Temporary orders — Ex parte proceedings.

SECTION.

- 15-15-5. Duties of police officers.
15-15-6. Form of complaint.
15-15-7. Notice of penalty.

15-15-1. Definitions. — The following words as used in this chapter shall have the following meanings:

"DOMESTIC ABUSE": The occurrence of one or more of the following acts between present or former family members:

(a) Attempting to cause or causing physical harm without cause or provocation;

(b) Placing another in fear of imminent serious physical harm without cause or provocation;

(c) Causing another to engage involuntarily in sexual relations by force, threat of force, or duress without cause or provocation.

"COURTS": The family court.

"PRESENT OR FORMER FAMILY MEMBER": Spouse, former spouse, minor children.

"LAW OFFICER": Any officer duly authorized to serve process for the family court.

History of Section.

P.L. 1982, ch. 389, § 1.

Comparative Legislation. Domestic

abuse prevention:

Conn. Gen. Stat. § 46b-38.

Mass. Ann. Laws, ch. 209A, §§ 1 — 6.

15-15-2. Filing of complaint. — Proceedings under this chapter shall be filed, heard, and determined in the family court of the county in which the plaintiff resides and shall be independent of divorce

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proceedings. Any proceedings under this chapter shall not preclude any other available civil or criminal remedies. A party filing a complaint under this chapter may do so without payment of any filing fee, but shall be required to disclose any prior or pending actions for divorce or separation. If the plaintiff has left the residence or household to avoid abuse, he or she may bring the action in the court of previous residence or the court of present residence. There shall be no minimum residence requirements for the bringing of an action under this chapter.

History of Section.

P.L. 1982, ch. 389, § 1.

15-15-3. Protective orders — Penalty — Jurisdiction. — A person suffering from domestic abuse may file a complaint in the family court requesting any order which will protect and support her/him from such abuse, including but not limited to the following:

(a) ordering that the defendant be restrained and enjoined from assaulting, molesting or otherwise interfering with the plaintiff at home, on the street or elsewhere, whether the defendant is an adult or minor.

(b) ordering the defendant to vacate the household forthwith.

(c) awarding the plaintiff custody of the minor children of the parties, if any.

(d) upon motion by the plaintiff, his/her address shall be released only at the discretion of the family court judge.

Any violation of the aforementioned protective orders shall subject the defendant to being found in contempt of court.

The contempt order shall not be exclusive and shall not preclude any other available civil or criminal remedies. Any relief granted by the court shall be for a fixed period of time not to exceed one (1) year, at the expiration of which time the court may extend any order, upon motion of the plaintiff for such additional time as it deems necessary to protect the plaintiff from abuse. The court may modify its order at any time upon motion of either party.

Any violation of a protective order under this chapter shall be a misdemeanor which shall be punished by a fine of no more than five hundred dollars (\$500) or by imprisonment for not more than one (1) year, or both.

The district court shall have criminal jurisdiction over all violations of this chapter.

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15-15-4. Temporary orders — Ex parte proceedings. — (A) Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect the plaintiff from abuse, including relief as provided in chapter 5 of this title.

If it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the plaintiff, before notice can be served and a hearing had thereon, the court may enter such temporary order without notice as it deems necessary to protect the plaintiff. Every order granted without notice shall expire by its terms within such time after entry not to exceed thirty (30) days, as the court fixes, unless within the time so fixed the order by consent or for good cause shown and after hearing of argument by the parties or counsel, is extended for an additional period. In case a temporary order is granted without notice, the matter shall be set down for hearing at the earliest possible time and may be given precedence of all matters except older matters of the same character and when the matter comes on for hearing the party who obtained the temporary order shall proceed with the complaint for an order pursuant to § 15-15-3 and, if he does not do so, the court shall dissolve the temporary order.

(B) When the court is unavailable after the close of business a complaint may be filed before any available family court judge who may grant relief to the plaintiff under this chapter upon cause shown in an ex parte proceeding.

No temporary order shall be granted pursuant to the provisions of this section unless it clearly appears from specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before notice can be served and a hearing had thereon.

(C) Any order issued under this section and any documentation in support thereof shall be filed immediately with the clerk of the family court. Such filing shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter.

History of Section.
P.L. 1982, ch. 389, § 1.
Compiler's Notes. As enacted, this section

contains a heading which read "Temporary orders; ex parte relief; notice; hearing."

15-15-5. Duties of police officers. — (A) Whenever any police officer has reason to believe that a family or household member has been abused, that officer shall use all reasonable means to prevent further abuse, including: (1) remaining on the scene as long as there is a danger to the physical safety of such person or until such person is able to leave the dwelling unit; (2) assisting such person in obtaining medical treatment necessitated by an assault, including obtain-

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ing transportation to an emergency medical treatment facility; (3) giving such person immediate and adequate notice of his/her rights under this chapter; (4) arresting the person if the officer has probable cause to believe that a felony has been committed, or a misdemeanor has been committed in his presence.

(B) Notice by the police officer to the victim shall be by handing said victim a copy of the following statement written in English, Portuguese, Spanish and by reading the same to such person.

"You have the right to go to the family court and file a complaint requesting any of the following applicable orders for temporary relief: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order awarding you custody of a minor child.

"You have the right to go to district court and file a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill, or other related crimes.

"If you are in need of medical treatment, you have the right to demand that the officer present obtain transportation to an emergency medical treatment facility.

"If you believe that police protection is needed for your physical safety, you have the right to demand that the officer present remain at the scene until you and your children can leave or until your safety is otherwise insured."

History of Section.
P.L. 1982, ch. 389, § 1.

15-15-6. Form of complaint. — (A) A form in substantially the following language shall suffice for the purpose of filing a complaint under this chapter:

STATE OF RHODE ISLAND
COUNTY OF _____

FAMILY COURT

Plaintiff :
:
VS. :
:

Defendant :

F.C. NO. _____

RHODE ISLAND

ENTER:

PER ORDER:

JUSTICE

CLERK

Presented by:

Attorney for Plaintiff

WHITE COPY

YELLOW COPY

PINK COPY

GOLDENROD COPY

- Court
- Plaintiff
- Defendant
- Police Department

History of Section.
P.L. 1982, ch. 389, § 1.

15-15-7. Notice of penalty. — Each protective order issued under this chapter, including a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

A PERSON WHO VIOLATES THIS ORDER MAY BE GUILTY OF A MISDEMEANOR AND MAY BE PUNISHED BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE (1) YEAR, OR BOTH.

Category	Citation
1. Victim Compensation Program	16-3-1110 et seq.
1.1 Responsible Agency	16-3-1110(1), 16-3-1120, 16-3-1160
1.2 Eligible Claimants	16-3-1210, 16-3-1220, 16-3-1310
1.3 Losses Covered	16-3-1180(1),(2)
1.4 Minimum and Maximum Award	16-3-1180(4),(5)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	16-3-1170
1.7 Filing of Claim - Time Limit	16-3-1230(2)
1.8 Emergency Award	16-3-1150
1.9 Funding	16-3-1290; 24-23-210, 24-23-220
2. Restitution	
2.1 Sentencing Option	
2.2 Mandatory Condition of Probation	17-25-125 (for property offenses); 22-3-800 (for check forgery)
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	17-22-140 (by offender on pretrial intervention); 17-25-120 (for theft)
2.5 Administration/Enforcement	16-3-1270, 24-3-40 (by offender on work furlough); 24-23-30(e), 24-23-40, 24-23-110
3. Escrow and Forfeiture of Offender Profits	15-59-40 et seq.
4. Witness Fees	19-19-20-et seq.
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	16-9-340
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	24-21-14(a)
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	17-22-80 (victim recommendation in pretrial intervention program)
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	27-21-10 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	43-29-40 et seq.
12.3 Abuse, Neglect, Exploitation - Reporting	43-29-10, 43-29-42 et seq.
12.4 Abuse, Neglect, Exploitation - Protective Services	43-29-70
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	16-3-1120(3)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	16-3-1240 (victim compensation programs)
15.4 Sexual Assault Counselor Privilege	

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South Carolina Code

Title 16

ARTICLE 13 [New]

COMPENSATION OF VICTIMS OF CRIME

Special Note to Article—

Section 7 of 1982 Act No. 455, which added this article, provides as follows:

"SECTION 7. The judicial review process of the Administrative Procedures Act, as outlined in S. C. Code Section 1-23-380 and Section 1-23-390 of the 1976 Code does not apply to this article."

SEC.

16-3-1110. Definitions.

16-3-1120. Director of Victim's Compensation Fund; salary; powers and duties.

16-3-1130. Claims; assignment to field representative; investigation and reports.

16-3-1140. Application for review of decision; appeals; subpoenas; report on review.

16-3-1150. Emergency awards.

16-3-1160. South Carolina Crime Victim's Advisory Board; appointments; term of office; vacancies in office; meetings; subsistence, mileage, and per diem.

16-3-1170. Basis for award.

16-3-1180. Amount of award; apportionment among multiple claimants; rejection of application for award.

16-3-1190. Reduction of award.

16-3-1200. Conduct of victim or intervenor contributing to infliction of injury; reduction of award; rejection of claim.

16-3-1210. Persons eligible for award; residents and non-residents; survivor of deceased victim or intervenor entitled to file claim.

16-3-1220. Persons ineligible for award.

16-3-1230. Claim filed on behalf of minor or incompetent; time limitations.

16-3-1240. Disclosure of records as to claims; confidentiality; applicability of Freedom of Information Act.

16-3-1250. Subrogation of State to right of action accruing to claimant, victim, or intervenor.

16-3-1260. Reimbursement of State by convicted person for payment from Victim's Compensation Fund.

16-3-1270. Restitution by offender; lien against offender; filing of lien.

16-3-1280. False claim; penalties.

16-3-1290. Victim's Compensation Fund; payment of claims, expenses and administrative costs.

16-3-1300. Payment of award; exception from garnishment, execution, or attachment.

16-3-1310. Payment of award to victim or intervenor confined in correctional facility.

16-3-1320. Payment of award as not constituting ordinary income for tax purposes.

16-3-1330. Insufficient funds in Victim's Compensation Fund for payment of claims.

16-3-1340. Attorney for claimant; fees; attorney for Victim's Compensation Fund; soliciting employment to pursue claim or award; penalties.

§ 16-3-1110. Definitions.

For the purpose of this article:

(1) "Board" shall mean the South Carolina Crime Victim's Advisory Board.

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(2) "Claimant" shall mean any person filing a claim pursuant to this article.

(3) "Fund" shall mean the South Carolina Victim's Compensation Fund.

(4) "Director" shall mean the Director of the State Workers' Compensation Fund.

(5) "Field Representative" shall mean a field representative of the State Workers' Compensation Fund.

(6) "Crime" shall mean an act which constitutes a crime as defined by state, federal or common law which results in physical injury or death to the victim. No act involving the operation of a motor vehicle, boat or aircraft which results in injury or death shall constitute a crime for the purpose of this article unless the injury or death was recklessly or intentionally inflicted through the use of such vehicle, boat or aircraft. Reckless use of a motor vehicle, boat or aircraft shall include but not be limited to violations of §§ 56-5-2910, 56-5-2920, 56-5-2930 and 56-5-1210. Such reckless use shall also include the use of a motor vehicle, boat or aircraft to flee the scene of a crime in which the driver of the motor vehicle, boat or aircraft knowingly and willingly participated.

(7) "Victim" shall mean a person who suffers physical injury or death as a direct result of a crime.

(8) "Intervenor" shall mean any person who goes to the aid of another and suffers physical injury or death as a direct result of acting, not recklessly, to prevent the commission of a crime, to lawfully apprehend a person reasonably suspected of having committed a crime or to aid the victim of a crime, except that the term 'intervenor' shall not include law enforcement officers performing their normal duties.

(9) "Deputy Director" shall mean the Deputy Director of the Victim's Compensation Fund.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Cross reference—

As to the conduct of an intervenor contributing to infliction of an injury, see § 16-3-1200.

ALR and L Ed Annotations—

Statutes providing for governmental compensation for victims of crime. 20 ALR4th 63.

§ 16-3-1120. Director of Victim's Compensation Fund; salary; powers and duties.

The Director of the State Workers' Compensation Fund, as appointed by the Governor pursuant to § 42-7-20, is hereby also named Director of the Victim's Compensation Fund. The Direc-

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tor's annual salary shall be eighty-five percent of the salary paid to the Industrial Commissioners of the state. The Director shall be responsible for administering the provisions of this article. Included among the duties of the Director shall be the responsibility, with approval of the South Carolina Crime Victim's Advisory Board as established herein, for developing and administering a plan for informing the public of the availability of the benefits provided under this article and procedures for filing claims for such benefits.

The Director, upon approval by the South Carolina Crime Victim's Advisory Board, shall have the following additional powers and duties:

(1) To appoint a Deputy Director of the Victim's Compensation Fund, and such staff necessary for the operation thereof, and to contract for services. The Director shall recommend the salary for the Deputy Director and other staff members, as allowed by statute or applicable law.

(2) To promulgate regulations to carry out the provisions and purposes of this article.

(3) To request from the Attorney General, South Carolina Law Enforcement Division, solicitors, magistrates, judges, county and municipal police departments and any other agency or department such assistance and data as will enable the Director to determine whether, and the extent to which, a claimant qualifies for awards hereunder. Any person, agency or department listed above shall be authorized to provide the Director with the information requested upon receipt of such a request from the Director. Any provision of law providing for confidentiality of juvenile records shall not apply to a request of the Deputy Director, Director, or Commissioner pursuant to this section.

(4) To reinvestigate or reopen previously decided award cases as the Deputy Director deems necessary.

(5) To require the submission of such medical records as are needed by the Commissioner or Deputy Director or his staff and, when necessary, to direct medical examination of the victim.

(6) To take or cause to be taken affidavits or depositions within or without the State. This power may be delegated to the Deputy Director or Commissioner.

(7) To render each year to the Governor and to the General Assembly a written report of the activities of the Victim's Compensation Fund pursuant to this article.

(8) To delegate the authority to the Deputy Director to reject incomplete claims for awards or assistance.

(9) To render awards to victims of crime or to those other persons entitled to receive such awards hereunder in the manner

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authorized by this article. The power may be delegated to the Deputy Director.

(10) To apply for funds from, and to submit all necessary forms to, any federal agency participating in a cooperative program to compensate victims of crime.

(11) To delegate to the Commissioner on appeal matters any power of the Director or Deputy Director.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

Research and Practice References—

17 Am Jur 2d, Contracts §§ 202, 203, 205
81A CJS, States § 195

ALR and L Ed Annotations—

Statutes providing for governmental compensation for victims of crime, 32 ALR3d 1446.

§ 16-3-1130. Claims; assignment to field representative; investigation and reports.

(1) A Claim, once accepted for filing and completed, shall be assigned to a Field Representative. The Field Representative shall examine the papers filed in support of such claim and cause an investigation to be conducted into the validity of the claim. The investigation shall include but not be limited to an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which such claim is based. All claims arising from the death of an individual as a direct result of a crime shall be considered together by a single field representative.

(2) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended, prosecuted or convicted of any crime based upon the same incident or whether the alleged criminal has been acquitted or found not guilty of the crime in question.

(3) The Field Representative conducting the investigation shall file with the Deputy Director a written report setting forth a recommendation and his reason therefor. The Deputy Director shall render a decision and furnish the claimant with a copy of the report.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

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Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

Cross references—

As to emergency awards in case of need, see § 16-3-1150.

§ 16-3-1140. Application for review of decision; appeals; subpoenas; report on review.

(1) The claimant may, within thirty days after receipt of the report of the decision of the Deputy Director, make an application in writing to the Deputy Director for review of the decision.

(2) Upon receipt of an application for review pursuant to subsection (1) of this section, the Deputy Director shall forward all relevant documents and information to the Chairman of the South Carolina Industrial Commission. The Chairman or his designee, who shall be an Industrial Commissioner, shall review the records and affirm or modify the decision of the Deputy Director. If deemed necessary by the Industrial Commissioner or if requested by the claimant, the Industrial Commissioner shall order a hearing prior to rendering a decision. At the hearing any relevant evidence, not legally privileged, shall be admissible. The Industrial Commissioner shall render a decision within ninety days after completion of his investigation. The action of the Industrial Commissioner shall be final and non-appealable. If the Deputy Director receives no application for review pursuant to subsection (1), his decision shall become the final decision of the Victim's Compensation Fund.

(3) The Industrial Commissioner, for purposes of this Article, may subpoena witnesses, administer or cause to be administered oaths, and examine such parts of the books and records of the parties to proceedings as relate to questions in dispute.

(4) The Deputy Director shall within ten days after receipt of the Industrial Commissioner's final decision make a report to the claimant including a copy of such final decision and the reasons why such decision was made.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

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Cross references—

As to payment of attorney's fees from Victim's Compensation Fund, see § 16-3-1340.

§ 16-3-1150. Emergency awards.

Notwithstanding the provisions of § 16-3-1130, if it appears to the Deputy Director that such claim is one with respect to which an award probably will be made and undue hardship will result to the claimant, if immediate payment is not made, the Deputy Director may make one or more emergency awards to the claimant pending a final decision in the case, provided that (a) the amount of each such emergency award shall not exceed five hundred dollars, (b) the total amount of such emergency awards shall not exceed fifteen hundred dollars, (c) the amount of such emergency award shall be deducted from any final award made to the claimant and (d) the excess of the amount of any such emergency award over the amount of the final award, or the full amount of any emergency award if no final award is made, shall be repaid by the claimant to the Victim's Compensation Fund as created by this article.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

Cross references—

As to the requirement that an emergency award be deducted from the final award, see § 16-3-1190.

§ 16-3-1160. South Carolina Crime Victim's Advisory Board; appointments; term of office; vacancies in office; meetings; subsistence, mileage, and per diem.

There is hereby created a board to be known as the South Carolina Crime Victim's Advisory Board to consist of seven members to be appointed by the Governor with the advice and consent of the Senate. At least two of the members shall have been admitted to practice law in this State for not less than five years next preceding their appointment, one member shall be a physician licensed to practice medicine under the laws of this State, and one member shall have at least four years administrative experience in a court-related Victim's Assistance Fund, provided that such a qualified person is available.

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The term of office of each appointed member shall be five years and until his successor is appointed and qualified. Of those members first appointed, two shall serve for a term of one year, two for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years, with such initial terms to be designated by the Governor when making the initial appointments. The Governor shall select a chairman. The Board may elect a secretary and such other officers as deemed necessary.

Any vacancy shall be filled for the remainder of the unexpired term by appointment in the same manner of the initial appointments. The Board shall meet at least twice each year and shall be subject to the call of the Chairman, to consider improvements in and monitor the effectiveness of the Victim's Compensation Fund, and to approve the budget and regulations pertaining to the Victim's Compensation Fund. The members of the Board shall receive the same subsistence, mileage, and per diem as is provided by law for members of state boards, committees and commissions, to be paid from the Victim's Compensation Fund as created by this article.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1170. Basis for award.

No award shall be made unless the Industrial Commissioner or the Deputy Director finds that (a) a crime was committed, (b) such crime directly resulted in physical injury to or death of the victim or intervenor and (c) police records show that such crime was promptly reported to the proper authorities. In no case may an award be made where the police records show that such report was made more than forty-eight hours after the occurrence of such crime unless the Deputy Director or the Industrial Commissioner, for good cause shown, finds the delay to have been justified. The Industrial Commissioner or Deputy Director upon finding that any claimant or award recipient has not fully cooperated with all law enforcement agencies, may deny, reduce, or withdraw any award.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

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"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1180. Amount of award; apportionment among multiple claimants; rejection of application for award.

(1) Any award made pursuant to this article shall be in an amount not exceeding actual expenses including indebtedness reasonably incurred for medical services or other services necessary as a direct result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury.

An award for loss of earnings may also include reasonable expenses of job retraining services or similar employment-oriented rehabilitative services incurred as a direct result of the injury.

(2) In the event of death of a victim or intervenor, an award may be made for actual expenses reasonably incurred for burial, not to exceed one thousand dollars.

(3) If there are two or more family members as specified in § 16-3-1210(c) who are entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned by the Deputy Director or the Industrial Commissioner among the claimants.

(4) No award made under the provisions of this article shall exceed ten thousand dollars in the aggregate.

(5) No award shall be made on a claim unless the claimant has incurred a minimum actual expense of three hundred dollars or has lost non-reimbursable earnings or support for at least two consecutive weeks, *provided*, however, that this provision shall be waived upon a determination by the Deputy Director or Industrial Commissioner that the interests of justice so require.

(6) The Deputy Director or Industrial Commissioner may reject an application for an award when the claimant has failed to cooperate with the Deputy Director or his staff in the verification of the information contained in the application.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

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§ 16-3-1190. Reduction of award.

Any award made pursuant to this article shall be reduced by the amount of any payments received or to be received as a result of the injury (a) from or on behalf of the person who committed the crime, (b) from any other private or public source, included an award of workmen's compensation pursuant to the laws of this State or (c) as an emergency award pursuant to § 16-3-1150.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

Cross references—

As to the reduction of an award based on the contributing conduct of the victim or intervenor, see § 16-3-1200.

§ 16-3-1200 Conduct of victim or intervenor contributing to infliction of injury; reduction of award; rejection of claim.

In determining the amount of an award, the Deputy Director or Industrial Commissioner shall determine whether because of his conduct the victim or intervenor of such crime contributed to the infliction of his injury, and the Deputy Director or Industrial Commissioner may reduce the amount of the award or reject the claim altogether in accordance with such determination; *provided*, however, the Deputy Director or Industrial Commissioner may disregard for this purpose the contribution of an intervenor for his own injury or death where the record shows that such contribution was attributable to efforts by the intervenor as set forth in subsection (8) of § 16-3-1110.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1210. Persons eligible for award; residents and non-residents; survivor of deceased victim or intervenor entitled to file claim.

Except as provided in § 16-3-1220, the following persons shall

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be eligible for awards pursuant to this article:

- (a) a victim;
- (b) an intervenor;
- (c) a surviving spouse, parent or child who is legally dependent for his principal support upon a deceased victim or intervenor.

Victims and intervenors must be legal residents of this State and the crime must have been committed in this state in order to qualify for an award hereunder; *provided*, however, that if the victim or intervenor is a legal resident of this State and the crime occurred in another state which does not have a similar crime victim's compensation program, such victim or intervenor shall be entitled to file a claim for an award hereunder; *provided*, further, that if the crime occurs in this State and the victim or intervenor is a legal resident of another state which has a similar crime victim's compensation program which would allow a legal resident of this State to file a claim thereunder if the crime occurred in that State, then such nonresident shall be permitted to file a claim hereunder; and *provided*, further, that no victim or intervenor whether a legal resident of this State or another state shall be entitled to file a claim in more than one state. A surviving spouse, parent, or child who is legally dependent for his principal support upon a deceased victim or intervenor shall be entitled to file a claim hereunder if the deceased victim or intervenor would have been so entitled regardless of the residence or nationality of the surviving spouse, parent or child.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

Cross references—

As to apportionment of an award between two or more family members, see § 16-3-1180.

As to other conduct or relationships rendering a claimant ineligible for an award, see § 16-3-1220.

As to the filing of a claim on behalf of a minor or incompetent, see § 16-3-1230.

As to the subrogation of the State to a cause of action accruing to a claimant, victim or intervenor, see § 16-3-1250.

§ 16-3-1220. Persons ineligible for award.

- (1) A person listed in items (a), (b), or (c) of § 16-3-1210 shall be ineligible for an award if he or she committed or aided in the commission of the crime upon which the claim was based or was engaged in any unlawful activity at the time of the crime.

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- (2) Unless the Deputy Director or Industrial Commissioner shall determine in a particular case that the interests of justice require otherwise, a person listed in items (a), (b), or (c) of § 16-3-1210 shall be ineligible for an award if he or she:

(a) is a surviving spouse, parent or child who is legally dependent upon a deceased victim or intervenor who committed an act set forth in subsection (1) of this section, or

(b) was residing at the time of the crime in the same household as the person who committed the crime.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1230. Claim filed on behalf of minor or incompetent; time limitations.

- (1) A claim may be filed by a person eligible to receive an award, as provided in § 16-3-1210, or, if such person is an incompetent or a minor, by his parent or legal guardian or such other individual authorized to administer his affairs.

(2) A claim must be filed by the claimant not later than one hundred and eighty days after the occurrence of the crime upon which such claim is based or not later than one hundred and eighty days after the death of the victim or intervenor. Upon good cause shown, the Deputy Director may extend the time for filing for a period not to exceed two years after such occurrence or death.

(3) Claims shall be filed in the office of the Deputy Director by mail or in person. The Deputy Director shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and meeting the requirements as to form of the claim contained in the regulations of the Board.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

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§ 16-3-1240. Disclosure of records as to claims; confidentiality; applicability of Freedom of Information Act.

It shall be unlawful, except for purposes directly connected with the administration of the victim's compensation program, for any person to solicit, disclose, receive or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards hereunder without the written consent of the applicant or recipient. The records, papers, files, and communications of the Commissioner, Director and his staff shall be regarded as confidential information and privileged and not subject to disclosure under the Freedom of Information Act as contained in Chapter 3 of Title 30.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1250. Subrogation of State to right of action accruing to claimant, victim, or intervenor.

Payment of an award pursuant to this article shall subrogate the State, to the extent of such payment to any right of action accruing to the claimant or to the victim or intervenor to recover losses resulting from the crime with respect to which the award is made.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1260. Reimbursement of State by convicted person for payment from Victim's Compensation Fund.

(1) Any payment of benefits to, or on behalf of, a victim or intervenor or eligible family member under this article shall create a debt due and owing to the State by any person found in a court of competent jurisdiction of this State to have committed such criminal act.

(2) The circuit court, when placing on probation any person

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who owes a debt to the State as a consequence of a criminal act, may set as a condition of probation the payment of the debt or a portion of the debt to the State. The court may also set the schedule or amounts of payments subject to modification based on change of circumstances.

(3) The Department of Parole and Community Corrections shall also have the right to make payment of the debt or a portion of the debt to the State a condition of parole.

(4) When a juvenile is adjudicated delinquent in a family court proceeding involving a crime upon which a claim under this article can be made, the family court in its discretion may order that the juvenile pay such debt to the Victim's Compensation Fund as created by this article as an adult would have to pay had an adult committed such crime. Any assessments so ordered may be made a condition of probation as provided in § 20-7-1330.

(5) Payments authorized or required under this section shall be paid to the Victim's Compensation Fund.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

Cross references—

As to the Victim's Compensation Fund, generally, see § 16-3-1290.

§ 16-3-1270. Restitution by offender; lien against offender; filing of lien.

If a person is unable at the time of sentencing or at such other time as the court may set to pay a restitution charge imposed by the court pursuant to §§ 24-23-210 through 24-23-230, such restitution charge shall constitute a lien against the offender and against any real or personal property of the offender; *provided*, however, a restitution charge shall not constitute a lien if it is waived by the Director pursuant to § 24-23-210 as amended herein. Such lien may be filed by the Attorney General in the respective offices of the clerks of court and registers of mesne conveyances of this State in the same manner state tax liens are filed and may be enforced and collected by the Attorney General in the same manner state tax liens are enforced and collected.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within

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sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1280. False claim; penalties.

Any person who knowingly makes a false claim or a false statement in connection with any claim hereunder shall be deemed guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than five hundred dollars or by a term of imprisonment for not less than one year, or both, and shall further forfeit all money received hereunder, if any.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1290. Victim's Compensation Fund; payment of claims, expenses and administrative costs.

(1) There is hereby created a special fund to be known as the Victim's Compensation Fund for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of Victim's Compensation Fund and the payment of claims. The State Treasurer shall be the custodian of the fund and all monies, securities and interest in the fund shall be held in trust by the State Treasurer pursuant to such regulations as may be promulgated by the board.

(2) The funds placed in the Victim's Compensation Fund shall consist of all money appropriated by the General Assembly, if any, for the purpose of compensating claimants under this article and money recovered on behalf of the State pursuant to this article by subrogation or other action, recovered by court order, received from the federal government, received from additional court costs, received from assessments or fines, or received from any other public or private source, pursuant to this article.

(3) All administrative costs of this article, except the Director's salary, shall be paid out of money collected pursuant to this article which has been deposited in the Victim's Compensation Fund.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within

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sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

Cross references—

As to the effect of insufficiency of funds in the Victim's Compensation Fund to pay claims, see § 16-3-1330.

As to the requirement that a portion of funds derived from assessments against persons committing certain crimes be deposited in the Victim's Compensation Fund, see § 24-23-220.

§ 16-3-1300. Payment of award; exception from garnishment, execution, or attachment.

Any award made under this article shall be paid in accordance with the discretion and decision of the Deputy Director as to the manner of payment, subject to the regulations of the board and not inconsistent with the Industrial Commissioner's award. No award made pursuant to this article shall be subject to garnishment, execution or attachment other than for expenses resulting from the injury which is the basis for the claim. In every case providing for an award to a claimant under this article, the Deputy Director or Industrial Commissioner may, if it is his opinion the facts and circumstances of the case warrant it, convert the award to be paid into a partial or total lump sum, without discount.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1310. Payment of award to victim or intervenor confined in correctional facility.

No award of any kind shall be made under this article to a victim or intervenor injured while confined in any federal, state, county or municipal jail, prison or other correctional facility.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:

"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

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§ 16-3-1320. Payment of award as not constituting ordinary income for tax purposes.

An award made pursuant to this article shall not constitute a payment which is treated as ordinary income under either the provisions of Chapter 7 of Title 12 of the 1976 Code, or to the extent lawful, under the United States Internal Revenue Code.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1330. Insufficient funds in Victim's Compensation Fund for payment of claims.

Notwithstanding any other provision of the article to the contrary, where an award under this article has been authorized but there are not sufficient funds in the Victim's Compensation Fund to pay or continue paying such award, then such award or the remaining portion thereof shall not be paid unless and until sufficient funds become available from the fund and at such time awards which have not been paid shall begin to be paid in chronological order with the oldest award being paid first; *provided*, however, that in the event an award was to be paid in installments and some remaining installments have not been paid due to a lack of funds, then when funds due become available that award shall be paid in full when its appropriate time for payment comes on the chronological list before any other post-dated award shall be paid. Any award hereunder shall specifically not be a claim against the State if it cannot be paid due to a lack of funds in the Victim's Compensation Fund.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

§ 16-3-1340. Attorney for claimant; fees; attorney for Victim's Compensation Fund; soliciting employment to pursue claim or award; penalties.

A Claimant may be represented by an attorney in proceedings under this article. Fees for such attorney shall be paid from the Victim's Compensation Fund, subject to the approval of Director, except that in the event of an appeal pursuant to § 16-3-1140,

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attorneys' fees shall be subject to the approval of the Industrial Commissioner. Attorneys for the South Carolina Workers' Compensation Fund shall represent the South Carolina Victim's Compensation Fund in proceedings under this article.

Any person who receives any fee or other consideration of any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Deputy Director, or who makes it a business to solicit employment for a lawyer or for himself in respect to any claim or award for compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall, for each offense, be punished by a fine of not more than five hundred dollars or by imprisonment not to exceed one year, or by both such fine and imprisonment.

HISTORY: 1982 Act No. 455, § 2, eff June 9, 1982.

Editor's Note—

Section 8 of 1982 Act No. 455 provides as follows:
"SECTION 8. This act shall take effect upon approval by the Governor, who shall appoint the members of the S. C. Crime Victim's Advisory Board within sixty days. The operation of the Victim's Compensation Fund shall begin immediately but benefit payments shall be delayed until January 1, 1983, and shall then be paid only to victims and intervenors of crimes which are committed on January 1, 1983, or thereafter."

* * *

§ 24-23-210. Funding of community corrections program.

The community corrections program shall be supported by revenue generated as follows:

In any court, when sentencing a person convicted of an offense which has proximately caused physical injury or death to the victim the court may order the defendant to pay a restitution charge commensurate with the offense committed, not to exceed ten thousand dollars to the Victim's Compensation Fund.

Provided, that any circuit court judge may waive or suspend the imposition of all or part of the assessment made under Item B upon finding that the assessment would place severe financial hardship upon the offender or his family.

Provided, further that the Deputy Director, with the approval of the Director, and upon the approval of the judge who imposed the restitution charge may suspend imposition of all or part of a restitution charge made under Item B upon a showing made by petition of the offender that the restitution charge would place severe financial hardship upon the offender or his family.

HISTORY: 1981 Act No. 100 § 15, eff June 15, 1981; 1981 Act No. 178 Part II § 32, eff July 29, 1981; 1982 Act No. 455, § 3, eff June 9, 1982.

Effect of Amendments—

The 1981 amendment added to item A the last three sentences and, in the first

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sentence, inserted the words "including the assessment hereinafter provided," and made other minor changes in wording in the first sentence.

The 1982 amendment substantially rewrote this section.

Cross references—

As to the creation of a lien against a person for failure to pay a restitution charge imposed by a court under the provisions of §§ 24-23-210 to 24-23-230 for purpose of the Victim's Compensation Fund, see § 16-3-1270.

As to an agent's duty to keep accurate account of money collected for the community corrections program, see § 24-21-90.

As to a supervising agent's duty to collect assessments imposed as a condition of supervision upon release from prison, see § 24-23-220.

§ 24-23-220. Payment of assessments to clerk of court; transfer of funds to State Treasurer; disposition.

Assessments, restitution charges and assessments imposed as a condition of probation which are collected by clerks of court for the Court of General Sessions and assessments collected by magistrates' courts shall be paid monthly to the county treasurer of the county where the court is located.

Assessments imposed as a condition of supervision upon release from prison as specified in § 24-23-210 shall be collected by the supervising agent who shall transmit those funds to the Parole and Community Corrections Board where it shall be deposited in the State Treasury. The county treasurer, after duly noting and recording the receipt of such payments, shall transfer those funds to the State Treasurer who shall deposit them in the state's general fund. Assessments collected by municipal courts shall be paid monthly to the municipal financial officer who, after duly noting and recording the receipt of such payments, shall transfer those funds to the State Treasurer as above provided. One-half of these funds shall be appropriated to the Department for the express purpose of developing and operating community corrections programs. The remainder of the funds shall be deposited in the Victim's Compensation Fund as created in § 16-3-1290.

HISTORY: 1981 Act No. 100 § 15, eff June 15, 1981; 1981 Act No. 178 Part II § 32, eff July 29, 1981; 1982 Act No. 455, § 4, eff June 9 1982.

* * *

§ 17-22-140. Restitution to victim.

Prior to the completion of the pretrial intervention program the offender shall make restitution, as determined by the solicitor, to the victim, if any.

HISTORY: 1980 Act No. 360, § 15, eff April 10, 1980.

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§ 17-25-120. Restitution of stolen goods.

If any person shall rob or take away any money, goods or chattels from any person, from their person or otherwise, and be found guilty thereof, such money, goods and chattels shall be restored to the party so robbed or the owner thereof and the judge before whom any such person shall be found guilty shall award, from time to time, writs of restitution for such money, goods and chattels.

HISTORY: 1962 Code § 17-559; 1952 Code § 17-559; 1942 Code § 1148; 1932 Code § 1148; Cr. C. '22 § 42; Cr. C. '12 § 187; Cr. C. '02 § 153; G. S. 2492; R. S. 149; 21 H. 8 c. 11; 1712 (2) 458.

§ 17-25-125. Sentence for crimes involving the unlawful taking or receiving of or malicious injury to property may not be suspended unless restitution made.

Notwithstanding any other provision of law, in every case in which a person is sentenced for a crime involving the unlawful taking or receiving of or malicious injury to another's property, and the judge sentences such person less than the maximum sentence prescribed by law, a portion of such sentence may be suspended and the defendant placed on probation if he makes restitution to the victim in an amount equal to the monetary loss sustained by the victim as determined by the judge.

If the defendant fails to make restitution in accordance with the terms prescribed by the judge, the suspension shall be revoked and the defendant shall serve the original sentence.

Nothing contained herein shall preclude a judge from prescribing other conditions of probation.

* * *

§ 22-3-800. Suspension of imposition or execution of sentence in certain cases.

Notwithstanding the limitations of §§ 17-25-100 and 24-21-410, after a conviction or plea for any offense within his jurisdiction any magistrate may at the time of sentence suspend the imposition or execution of a sentence upon such terms and conditions as he may deem appropriate; *provided*, however, that after a conviction or plea for drawing and uttering a fraudulent check or other instrument in violation of § 34-11-60 within his jurisdiction he shall at the time of sentence suspend the imposition or execution of a sentence only upon a showing of satisfactory proof of restitution. *Provided*, further, when a minimum sentence is provided for by statute, except in § 34-11-90, the magistrate shall not have authority to suspend such sentence below the

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minimum sentence so provided and, with regard to penalties under Title 50, such penalties shall not be suspended to an amount less than twenty-five dollars unless the minimum penalty is a fine of less than that amount. Nothing in this section shall be construed to authorize or empower any magistrate to suspend any specific suspension of any rights or privileges as imposed under any statutory administrative penalty. Nothing in this section shall be construed as giving magistrates the right to place any person on probation.

* * *

§ 24-3-40. Disposition of wages of prisoner allowed to work at paid employment.

The employer of a prisoner authorized to work at paid employment in the community under §§ 24-3-20 to 24-3-50 shall pay the prisoner's wages directly to the Department of Corrections. The Commissioner of the Department of Corrections is authorized to withhold from the wages such costs incident to the prisoner's confinement as the Board of Corrections shall deem appropriate and reasonable. These withholdings shall be deposited to the maintenance account of the Department of Corrections. The balance of the wages shall, in the discretion of the Board, and in such proportions determined by the Board, be disbursed to the prisoner, the prisoner's dependents, to the victim of the crime, or deposited to the credit of the prisoner.

HISTORY: 1980 Act No. 431, § 2, eff May 22, 1980.

Effect of Amendments—

The 1980 amendment authorized disbursement of wages to the victim of the crime.

§ 24-23-30. Community corrections plan to include description of community-based program needs.

The community corrections plan shall include but not be limited to describing the following community-based program needs:

(e) Expanded use of presentence investigations and their role and potential for increasing the use of community-based programs, restitution and victim assistance; and

(f) Identification of programs for youthful and first offenders.

HISTORY: 1981 Act No. 100 § 15, eff June 15, 1981.

§ 24-23-40. Development of statewide policies with state agencies; guidelines for monitoring of restitution orders and fines; research and special studies; training of employees.

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The community corrections plan shall provide for:

(a) The Board's development, implementation, monitoring and evaluation of statewide policies, procedures and agreements with state agencies, such as the Departments of Vocational Rehabilitation and Mental Health and the Commission of Alcohol and Drug Abuse, for purposes of coordination and referral of probationers and parolees for rehabilitation services.

(b) The Board's development of specific guidelines for the vigorous monitoring of restitution orders and fines to increase the efficiency of collection and development of a systematic reporting system so as to notify the judiciary of restitution and fine payment failures on a regular basis.

(c) The Board's development of a program development-and-evaluation capability so that the Department can monitor and evaluate the effectiveness of the above programs as well as to conduct research and special studies on such issues as parole outcomes, revocations and recidivism.

(d) The Board's development of adequate training and staff development for its employees.

HISTORY: 1981 Act No. 100 § 15, eff June 15, 1981.

ARTICLE 2

SENTENCING AND PROBATION PROCEDURES

SEC.

24-23-110. Imposition of fine and restitution; board to implement necessary policies.

24-23-120. Presentence investigation.

24-23-130. Termination of supervision upon recommendation of head probation officer.

§ 24-23-110. Imposition of fine and restitution; board to implement necessary policies.

Judges of the Court of General Sessions may suspend the imposition or the execution of a sentence and may impose a fine and a restitution without requiring probation. The Board shall implement the necessary policies and procedures to ensure the payment of such fines and restitution and report to the court failures to pay.

HISTORY: 1981 Act No. 100 § 15, eff June 15, 1981.

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CHAPTER 59 Moneys Paid Into Court

New Sections Added

SEC.

- 15-59-40. Escrow of certain funds of persons charged with crimes.
15-59-50. Escrow of certain funds of persons charged with crimes; publishing of legal notice.
15-59-60. Escrow of certain funds of persons charged with crimes; disposition of escrowed funds.
15-59-70. Escrow of certain funds of persons charged with crimes; beginning of 5 year escrow period.
15-59-80. Escrow of certain funds of persons charged with crimes; action taken to defeat purpose of §§ 15-59-40 to 15-59-80 shall be null and void.

§ 15-59-40. Escrow of certain funds of persons charged with crimes.

Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused of a crime in this State, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts, feelings, opinions or emotions regarding such crime, shall pay over to the clerk of court of the county in which the crime is alleged to have been committed any monies which would otherwise, by terms of such contract, be owing to the persons so convicted or his representatives. The clerk of court shall deposit such monies in an interest bearing escrow account for the benefit of and payable to any victim of crimes committed by such person, *provided*, that such person is eventually convicted of the crime and, *provided*, further, that such victim, within five years of the date of the crime, brings a civil action in a court of competent jurisdiction and recovers a money judgment against such person or his representatives.

HISTORY: 1980 Act No. 372, § 1, eff April 16, 1980.

Cross references—

As to commencement of period of limitations for civil actions pursuant to this section, see § 15-59-70.

Research and Practice References—

79 Am Jur 2d, Welfare Laws § 46.

§ 15-59-50. Escrow of certain funds of persons charged with crimes: publishing of legal notice.

The clerk of court, at least once every six months for five years from the date he receives such monies shall cause to have pub-

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lished a legal notice in newspapers of general circulation in each county of the State advising such victims that such escrow monies are available to satisfy money judgments pursuant to this section.

HISTORY: 1980 Act No. 372, § 2, eff April 16, 1980.

Research and Practice References—

79 Am Jur 2d, Welfare Laws § 46.

§ 15-59-60. Escrow of certain funds of persons charged with crimes: disposition of escrowed funds.

Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such person pursuant to §§ 15-59-40 to 15-59-80 the clerk of court shall immediately pay over any monies in the escrow account to such person.

HISTORY: 1980 Act No. 372, § 3, eff April 16, 1980.

Research and Practice References—

79 Am Jur 2d, Welfare Laws § 46.

§ 15-59-70. Escrow of certain funds of persons charged with crimes: beginning of 5 year escrow period.

Notwithstanding any inconsistent provision of the civil practice law and rules with respect to the timely bringing of an action, the five-year period provided for in § 15-59-40 shall not begin to run until an escrow account has been established.

HISTORY: 1980 Act No. 372, § 4, eff April 16, 1980.

Cross references—

As to limitation of civil actions generally, see § 15-3-10 et seq.

Research and Practice References—

79 Am Jur 2d, Welfare Laws § 46.

§ 15-59-80. Escrow of certain funds of persons charged with crimes: action taken to defeat purpose of §§ 15-59-40 to 15-59-80 shall be null and void.

Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of §§ 15-59-40 to 15-59-80 shall be null and void as against the public policy of this State.

HISTORY: 1980 Act No. 372, § 5, eff April 16, 1980.

Research and Practice References—

79 Am Jur 2d, Welfare Laws § 46.

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§ 19-19-20. No witness fees in criminal cases in magistrates' courts.

In the magistrates' courts witnesses shall receive no fees or compensation whatever for attendance in criminal cases.

HISTORY: 1962 Code § 27-611; 1952 Code § 27-611; 1942 Code § 4964; 1932 Code § 4964; Civ. C. '22 § 5766; Civ. C. '12 § 4241; Civ. C. '02 § 3131; 1878 (16) 412; 1894 (21) 943, 1000; 1896 (22) 19; 1898 (22) 875; 1900 (23) 175; 1904 (24) 407; 1913 (28) 9; 1916 (29) 818; 1917 (30) 158; 1923 (33) 169; 1930 (36) 1556; 1932 (37) 1170, 1313, 1403; 1938 (40) 1619.

Cross references—

As to witness fees of person in this State ordered to attend out of state proceedings, see § 19-9-60.

§ 19-19-30. Witness fees in general sessions courts.

Except as otherwise expressly provided, no fee or other compensation shall be allowed any witness bound over or summoned to testify in any case in the court of general sessions unless the circuit judge who tried the case in which the witness was summoned shall certify that such witness was material, and in such case the witness shall be allowed a fee of fifty cents.

§ 16-9-340. Intimidation of court officials, jurors or witnesses.

Any person who by threats or force shall intimidate or impede any judge, magistrate, juror, witness or potential juror or witness, arbiter, commissioner or member of any commission of this State or any other official of any court, in the discharge of his duty as such, or by threats or force shall destroy or impede or attempt to obstruct or impede the administration of justice in any court shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars nor more than two thousand dollars or imprisoned not more than five years, or both.

§ 24-21-14. Commissioner of Pardons and Paroles; duties; qualifications; notice of parole hearing.

The Board shall appoint a Commissioner of Pardons and Paroles, who shall be responsible for scheduling meetings of the Board, assuring that appropriate cases and investigations are

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prepared for the Board, maintaining the official records of the Board, and such other administrative duties as assigned by the Board relating to Board activities.

The Commissioner shall have academic and professional qualifications commensurate with his duties and responsibilities including a background in the social sciences or criminal justice field. Salary for the Commissioner shall be determined by law.

The Commission shall give a thirty-day written notice of any hearing of the board considering parole for a prisoner who has been convicted of a crime of violence to the following persons:

(a) Any victim of the crime who suffered damage to his person as a result thereof or in the event such victim is deceased, to members of his or her immediate family; to the best of its ability;

(b) The solicitor who prosecuted the prisoner or his successor in the jurisdiction in which the crime was prosecuted;

(c) The law enforcement agency that was responsible for the arrest of the prisoner concerned.

HISTORY: 1981 Act No. 100 § 4, eff June 15, 1981.

CHAPTER 22 [New]

Pretrial Intervention Program

SEC.

- 17-22-10. Short title.
- 17-22-20. Definitions.
- 17-22-30. Circuit solicitors to establish pretrial intervention programs.
- 17-22-40. Pretrial intervention coordinator; staff; funding; report.
- 17-22-50. Persons not to be considered for intervention.
- 17-22-60. Standards of eligibility for intervention program.
- 17-22-70. Information which may be required by solicitor.
- 17-22-80. Recommendations of victim and law enforcement agency.
- 17-22-90. Agreements required of offender in program.
- 17-22-100. Time for application to intervention program.
- 17-22-110. Fees for application and acceptance; waiver.
- 17-22-120. Individual agreement between offender and solicitor; alcohol and drug abuse services.
- 17-22-130. Reports and identification as to offenders accepted for intervention program.
- 17-22-140. Restitution to victim.
- 17-22-150. Disposition of charges against offenders accepted for intervention program.
- 17-22-160. Time for establishment of programs.

§ 17-22-10. Short title.

This chapter may be cited as the "Pretrial Intervention Act."

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§ 17-22-80. Recommendations of victim and law enforcement agency.

Prior to any person being admitted to a pretrial intervention program the victim, if any, of the crime for which the applicant is charged and the law enforcement agency employing the arresting officer shall be asked to comment in writing as to whether or not the applicant should be allowed to enter an intervention program. In each case involving admission to an intervention program, the solicitor shall consider the recommendations of the law enforcement agency and the victim, if any, in making a decision.

HISTORY: 1980 Act No. 360, § 9, eff April 10, 1980.

§ 17-22-90. Agreements required of offender in program.

An offender who enters an intervention program shall:

- (1) Waive, in writing and contingent upon his successful completion of the program, his or her right to a speedy trial;
- (2) Agree, in writing, to the tolling while in the program of all periods of limitation established by statutes or rules of court;
- (3) Agree, in writing, to the conditions of the intervention program established by the solicitor;
- (4) In the event there is a victim of the crime, agree, in writing, to make restitution to the victim within a specified period of time and in an amount to be determined by the solicitor;
- (5) Agree in writing that any records relating to participation in pretrial intervention or information obtained through pretrial intervention is not admissible as evidence in subsequent proceedings, criminal or civil, and communication between pretrial intervention counselors and defendants shall remain as privileged communication unless a court of competent jurisdiction determines that there is a compelling public interest that such communication be revealed. In no case shall a written admission of guilt be required of a defendant prior to acceptance nor prior to completion of the pretrial intervention program.

CHAPTER 21

Disposition of Confiscated and Stolen Property

SEC.

- 27-21-10. Sales of confiscated property; records thereof; disposition of proceeds.
27-21-20. Sheriff may sell abandoned or recovered stolen property when owner cannot be found; advertising sales; disposition of proceeds.
27-21-30. Owner may recover net proceeds or property; payment into general fund of county.

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§ 27-21-10. Sales of confiscated property; records thereof; disposition of proceeds.

The sheriff of each county of this State shall sell at public auction at the courthouse of his county all barrels and other things of value confiscated by him and his deputies. At least seven days' notice shall be given by the sheriff prior to any such sale, such notice to be posted in the sheriff's office and on the bulletin board in the courthouse. All barrels and other things of value shall be sold for cash, at auction, called and conducted by the sheriff, the highest bidder to receive the property in each instance. The sheriff shall keep a record of such property confiscated and a record of all property sold, showing the amount received for it and the name of the purchaser. All funds derived from such sales shall be turned over to the treasurer of the county and credited to the general funds.

HISTORY: 1962 Code § 57-241; 1952 Code § 57-241; 1942 Code § 3542-1; 1941 (42) 149.

Related Local Laws—

For a local law regarding the use of such fund in Beaufort County, see Local Law Index.

For local laws permitting the use of confiscated automobiles by the sheriffs of Fairfield, Florence, and Greenwood Counties, see Local Law Index.

For a local law permitting the sheriff of Saluda County to use certain confiscated property, and as to the sale and use of proceeds, see Local Law Index.

Cross references—

As to offenses, prohibitions and enforcement of the liquor laws, see §§ 61-13-210 et seq.

As to forfeiture of property used in manufacture of ethyl alcohol for use as beverage, see §§ 61-11-280, 61-11-300.

As to confiscation of motor vehicles or other chattels used in stealing livestock, see § 16-13-50.

As to destroying confiscated gambling devices, see § 16-19-120.

As to confiscation of unstamped goods and vehicles transporting them, see §§ 12-21-2870 to 12-21-2970.

As to sale days of judicial sales, see § 15-39-680.

As to recovery of personal property generally, see §§ 15-69-10 et seq.

CHAPTER 21

Disposition of Confiscated and Stolen Property

§ 27-21-20. Sheriff may sell abandoned or recovered stolen property when owner cannot be found; advertising sales; disposition of proceeds.

The sheriff of any county may sell at public auction any recovered stolen property, and any property which has been abandoned within the county, when the true owner cannot be ascertained after reasonable effort. The sheriff shall make a diligent effort to ascertain the true owner of such property and at least twice prior to sale shall advertise the property with its full description in a

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newspaper having general circulation in the county. At any time after sixty days shall have elapsed after publication of the first advertisement, the sheriff may sell the abandoned or stolen property at public auction on the courthouse steps, or at such other public location within the county as the property is located or can be exhibited safely, provided that the other location is properly specified in the notice of sale. The sheriff shall turn over all proceeds of the sale, less necessary expenses of the sale, to the county treasurer who shall place such sums in a special fund.

§ 27-21-30. Owner may recover net proceeds or property; payment into general fund of county.

At any time within one year after the sale of any abandoned or recovered stolen property as provided for in § 27-21-20, the true owner may apply to the sheriff and after proper identification and proof of claim recover the net sum received from the sale, after necessary expenses are deducted. The property itself may be recovered after proper identification and proof of claim if such claim is made prior to sale. After the lapse of one year after sale the net sum received for the abandoned property shall be placed in the general fund of the county.

HISTORY: 1962 Code § 57-246; 1959 (51) 390.

* * *

CHAPTER 29

Protective Services for Developmentally Disabled and Senile Persons

New Sections Added

SEC.

43-29-41. Penalties for abuse.

43-29-42. Penalties for failure to report abuse.

§ 43-29-10. Definitions.

As used in this chapter:

See parent volume for items (1) through (4)]

(5) "Abuse or neglect" means actual physical abuse, unreasonable confinement by anyone or, when such person is under the care and control of another, a failure to provide for basic needs such as food, shelter, clothing, medical care or other necessities within the financial capability of the person exercising such care and control. *Provided*, however, no person shall be deemed to be

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abused or neglected for the sole reason he is being furnished nonmedical remedial treatment by spiritual means through prayer alone which he has practiced in accordance with the tenets and practice of a recognized church or religious denomination, in lieu of medical treatment.

[See parent volume for items (6) through (9)]

HISTORY: 1979 Act No. 70 § 10, eff July 1, 1979.

Editor's Note—

Section 1 of 1974 Act No. 1082 (1974 (58) 2312), as amended by § 1 of 1976 Act No. 594 (1976 (59) 1598), now provides:

"The General Assembly recognizes that there are many citizens of the State who, because of the infirmities of aging, mental retardation, mental illness, other developmental disabilities or like incapacities incurred at any age, are in need of protective services. Such services should, to the maximum degree of feasibility, allow the individual the same rights as other citizens, and at the same time protect the individual from exploitation, neglect, abuse or degrading treatment. This act is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process."

Effect of Amendments—

The 1979 amendment added the proviso at the end of item 5.

Cross references—

As to Client-Patient Protection Act, see §§ 43-30-10 et seq.

ATTORNEY GENERAL'S OPINIONS

Neither the Attorney General nor disabled persons in Court actions the Governor is legally authorized to against State agencies. 1976-77 Op furnish assistance to developmentally Atty Gen, No 77-189, p 145.

§ 43-29-20. Conditions for providing protective services; such services shall be voluntary unless ordered or requested.

Cross References—

As to South Carolina Protection and Advocacy System for the Handicapped, see § 43-33-330.

§ 43-29-30. Request for protective placement; evaluations; determination by court; expenses; review prior to discharge; placement facilities; civil rights.

(1) The department, an agency, or a guardian may request the family court or other court exercising jurisdiction to provide protective placement of an individual for purposes of care or custody. No protective placement may be ordered unless there is a determination by the court that the individual is unable to provide for his own protection from abuse or neglect by another or himself. The court shall appoint a guardian *ad litem* to insure that the best interest of the person is served.

(2) The court shall give preference in making a determination to the least drastic alternative considered to be proper under the

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circumstances, including a preference for noninstitutional care wherever possible. Before ordering the protective placement of any individual, the court shall direct a comprehensive evaluation of the person in need of services, if such an evaluation has not already been made. The court may utilize available multidisciplinary resources in the community in determining the need for placement. The department shall cooperate with the court in securing available resources. A copy of the comprehensive evaluation shall be provided to the guardian or to the guardian *ad litem* or attorney of the individual. The court obtaining the evaluation shall request appropriate information which shall include at least the following:

(a) The address of the place where the person is residing and the person or agency who is providing services at present, if any;

(b) A resume of professional treatment and services provided to the person by the department or agency, if any, in connection with the problem creating the need for placement;

(c) A medical, psychological, social, vocational and educational evaluation and review, where necessary, and any recommendations for or against maintenance of partial rights.

(3) The department shall make an evaluation and submit a written report at least once every six months covering the physical, mental and social condition of each person for whom it is acting and shall recommend less drastic placement or discharge where appropriate. Any record of the department or other agency pertaining to such a person shall not be open for public inspection. Information therein shall not be disclosed publicly in such a manner as to identify individuals, but may be made available on application for cause to persons approved by the director of the department or the court.

(4) Reasonable expenses for the evaluations required by this chapter shall be assumed by the Department. The Department shall seek appropriate Federal reimbursement for such evaluations.

(5) Prior to discharge from the care or custody of the department, the department shall review the need for continued protective service, including the appointment of a guardian or limited guardian. Upon recommendation by the department the court may appoint such guardian.

(6) Placement may be made to such facilities as nursing homes, boarding homes, personal medical institutions, foster care services or to other appropriate facilities.

(7) Any person may request voluntary protective placement under this chapter. No civil rights are relinquished as a result of such placement.

HISTORY: 1976 Act No. 594 § 2.

Effect of Amendments—

The 1976 amendment added "by another or himself" to the second sentence

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in subsection (1) and inserted the third sentence in that subsection; deleted "if a guardian has not been appointed" in the fifth sentence in subsection (2); deleted "which accepts a protective placement" from the first sentence in subsection (3); and added the second sentence in subsection (5).

Cross references—

As to jurisdiction of persons mentally incompetent, generally, see SC Const, Art 5, § 8.

As to appointment of guardian ad litem for retarded persons, see §§ 44-21-90, 44-23-710.

§ 43-29-40. Unlawful abuse or neglect of certain incapacitated persons; initiation of charges.

It shall be unlawful for any person to abuse, neglect or exploit any senile, mentally ill, developmentally disabled or mentally retarded person or any person who is incapable of caring for or managing his own affairs. This shall not apply to altercations or acts of assault between persons protected by this section.

Charges of such abuse, neglect or exploitation may be initiated upon complaints of private individuals or as a result of investigations by any state agency or public official or on the direct initiative of a county solicitor or law enforcement official.

HISTORY: 1979 Act No. 70 § 11, eff July 1, 1979.

Effect of Amendments—

The 1979 amendment rewrote the first paragraph, which formerly applied only to senile or developmentally disabled persons.

§ 43-29-41. Penalties for abuse.

Notwithstanding the provisions of § 43-29-100, any person who violates the provisions of § 43-29-40 shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars nor more than five thousand dollars or be imprisoned for not less than ninety days nor more than five years.

HISTORY: 1979 Act No. 70 § 12, eff July 1, 1979.

Cross References—

As to penalties for abusing or failing to report abuse of clients or patients, see § 43-30-90.

§ 43-29-42. Penalties for failure to report abuse.

Notwithstanding the provisions of § 43-29-100, any person who fails to report alleged abuse or maltreatment of persons protected by § 43-29-40 shall be charged as an accessory after the fact and shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than one thousand dollars or be imprisoned for not more than six months.

HISTORY: 1979 Act No. 70 § 13, eff July 1, 1979.

Cross references—

As to penalties for abusing or failing to report abuse of clients or patients, see § 43-30-90.

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§ 43-29-50. Medical practitioners shall report abuse or neglect of senile, developmentally disabled or mentally ill person; investigations and reports thereof.

All practitioners of the healing arts having reasonable cause to believe that any person who is senile, developmentally disabled or mentally ill has been subjected to physical abuse, neglect or exploitation by another or himself shall report or cause a report to be made as follows:

(a) An oral report, by telephone or otherwise, shall be made immediately to the County Department of Social Services or to the county sheriff's office or chief county law-enforcement officer in the county where such person resides or is found.

(b) Within three days following such oral report, an investigation shall be made by the County Department of Social Services or sheriff's office or chief county law-enforcement officer and a written report prepared which will include the following:

- (1) Name, age and address of such person,
- (2) Nature and extent of injury suffered by such person, including any evidence of previous injury,
- (3) Any other facts or circumstances known to the reporter which may aid in the future determination of guilt.

All reports prepared by the county sheriff's department or chief county law-enforcement officer shall be forwarded to the County Department of Social Services within twenty-four hours and vice versa.

HISTORY: 1976 Act No. 594 § 3.

Effect of Amendments—

The 1976 amendment deleted from the first sentence, "senile or developmentally disabled" and inserted in lieu thereof "senile, developmentally disabled or mentally ill" and added to the first sentence, "by another or himself."

Cross references—

As to local mental health programs, boards and centers, see §§ 44-15-10 et seq.

As to care and commitment of mentally ill persons, see §§ 44-17-10 et seq.

As to care and commitment of mentally retarded persons, see §§ 44-21-10 et seq.

As to inspection and investigation of complaints in health care facilities by the ombudsman, see §§ 43-38-10 et seq.

§ 43-29-60. Persons lodging complaints shall be immune from prosecution and civil liability.

Cross references—

As to immunity for report of abuse to client or patient, see § 43-30-80.

§ 43-29-70. Protective services pending trial; legal protection to prevent further abuse or neglect.

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Pending trial of any case arising from an alleged violation of this chapter, the County Department of Social Services is authorized to provide for protective services for the person alleged to have been abused, neglected or exploited. If a conviction results in the case, the agency may continue such services in a private or public institution or foster home, boarding home, nursing home or other similar facility until suitable permanent arrangements, as per § 43-29-80, can be made for the person concerned. All resources of the agency shall be utilized to insure that the abused, neglected or exploited person shall not be subject to such further abuse, neglect or exploitation. The court in the county shall, upon motion of the Department of Social Services, provide by order such legal protection as the court shall determine necessary to prevent such further treatment of the person concerned and provide for his care and custody.

HISTORY: 1976 Act No. 594 § 4.

Effect of Amendments—

The 1976 amendment added "as per § 43-29-80" to the second sentence in this section.

§ 43-29-80. Furnishing immediate care; proceedings to obtain order for temporary care.

When a County Department of Social Services finds a senile, developmentally disabled or mentally ill person who is unable because of financial resources or physical or mental disabilities to provide for his basic needs for shelter, food, clothing and health care, the agency may (1) immediately provide care to the extent the person is not taken into custody or removed from his home or (2) petition the court for a temporary order authorizing the agency to take custody of and provide care for such person until suitable permanent arrangements can be made which will insure the protection of the health and safety of the person concerned. Upon a determination of the court that such agency care is urgently and immediately necessary and upon appropriate order of the court, the agency shall be authorized to assume custody and place such person in a foster home, boarding home, nursing home or other similar facility for a period not to exceed ninety days. At the proceeding to obtain the necessary order, any relative or other interested person may appear to oppose or join in the petition of the agency, but notice to such relative or interested person is not required. During the period of agency custody, all resources of the social service agency shall be utilized to provide a permanent suitable environment for the persons concerned. Before expiration of the ninety day period, a proper hearing shall be held, as per § 43-29-30 to determine if further care is required.

HISTORY: 1976 Act No. 594 § 5.

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Effect of Amendments—

The 1976 amendment deleted "senile or developmentally disabled" from the first sentence and inserted in lieu thereof "senile, developmentally disabled or mentally ill," added alternative (1) to the first sentence as a second alternative available to the Department, inserted ", but notice to such relative or interested person is not required" in the third sentence, and struck the last sentence of the section and substituted in lieu thereof the revised last sentence.

§ 43-29-100. Penalties.

Cross references—

As to penalties for violation of § 43-29-40, see §§ 43-29-41 and 43-29-42.
As to penalties for abusing or failing to report abuse of clients or patients, see § 43-30-90.

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
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2. Restitution	23A-28-1 et seq.
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2.5 Administration/Enforcement	23A-28-7, 23A-28-8
3. Escrow and Forfeiture of Offender Profits	23A-28A-1 et seq.
4. Witness Fees	19-5-1
5. Victim's Bill of Rights	
6. Protection from Intimidation	
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7. Victim Notification	
7.1 of Compensation Program	23A-28-6 (of restitution plan)
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7.8 of Release of Offender	
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8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
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Category	Citation
8.3 Testimony at Sentencing Hearing	
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11. Victim-Witness Assistance	
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12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
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13. Sexual Assault Victims	
13.1 Payment for Medical Services	
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13.3 Child Sexual Assault Victim - Closed Proceedings	23A-24-6
13.4 Child Sexual Assault Victim - Admissible Depositions	23A-12-9
14. Domestic Violence	
14.1 Protective Orders	25-10-1, 25-10-5 et seq.
14.2 Domestic Violence Shelters	
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15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	25-10-20 (domestic abuse information)
15.4 Sexual Assault Counselor Privilege	

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South Dakota Codified Laws Annotated

CHAPTER 23A-28

RESTITUTION TO VICTIMS OF CRIME

- Section
23A-28-1. Policy of state.
23A-28-2. Definition of terms.
23A-28-3. Plan of restitution as condition for suspended sentence or probation — Present inability to make restitution — No pecuniary damages suffered.
23A-28-4. Submission of restitution plan to court — Approval or modification.
23A-28-5. Factors considered in formulating restitution plan.
23A-28-6. Notice to victims of restitution plan.
23A-28-7. Compliance with restitution plan as condition of probation or suspension — Payments to clerk.
23A-28-8. Failure to comply as violation of conditions of probation — Modification of plan.
23A-28-9. Civil remedies of victims unimpaired — Restitution payments set off — Evidence of restitution inadmissible.
23A-28-10. Limitations on duty of prosecutor — Victim's remedy by civil action.

23A-28-1. Policy of state. It is the policy of this state that restitution may be made by each violator of the criminal laws to the victims of his criminal activities to the extent that the violator is reasonably able to do so.

Source: SL 1978, ch 178, § 355.

Collateral References.
Criminal Law ⇌ 41.

Ability to pay as necessary consideration in conditioning probation or suspended sentence upon reparation or restitution, 73 ALR 3d 1240.

- Section
23A-28-2. Definition of terms.
23A-28-11. Community service restitution — Plan preparation, approval and modification.

23A-28-2. Definition of terms. As used by this chapter, unless the context otherwise requires:

- (1) "Victim" means any person, as defined in subdivision (29) of § 22-1-2, who has suffered pecuniary damages as a result of the defendant's criminal activities;
- (2) "Pecuniary damages" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, "pecuniary damages" includes damages for wrongful death;
- (3) "Criminal activities" includes any crime for which there is a plea of guilty or verdict of guilty upon which a judgment of conviction may be rendered and any other crime committed after June 30, 1979 which is admitted by the defendant, whether or not prosecuted. However, "criminal activities" does not include petty offenses;

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- (4) "Restitution" means full or partial payment of pecuniary damages to a victim;
- (5) "Community service restitution" means public service work provided under court order that benefits the general public which includes: charitable agencies, governmental agencies, educational institutions, the handicapped, the elderly, the ecology, the church of the offender's choice and any other agencies that the sentencing magistrate or judge deems reasonably rehabilitative to the offender. No work service may result in gain to any private individual or to a private corporation.

Source: SL 1978, ch 177, § 1; SDCL Amendments.
Supp, § 23-48A-1; SL 1978, ch 178, § 354; The 1981 amendment added subdivision 1979, ch 159, § 21; 1981, ch 191, § 1. (5).

23A-28-3. Plan of restitution as condition for suspended sentence or probation — Present inability to make restitution — No pecuniary damages suffered. If the sentencing court orders suspended imposition of sentence, suspended sentence, or probation, the court may require as a condition that the defendant, in co-operation with the court service officer assigned to the defendant, promptly prepare a plan of restitution, including the name and address of each victim, a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is presently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation period, the plan of restitution shall also state the conditions under which or the event after which the defendant will make restitution. If the defendant believes that no person suffered pecuniary damages as a result of the defendant's criminal activities, he shall so state.

Source: SL 1978, ch 177, § 2; SDCL
Supp, §§ 23-48A-2, 23-48A-3; SL 1978, ch 178, § 356.

23A-28-4. Submission of restitution plan to court — Approval or modification. The defendant's plan of restitution and the comments of defendant's court service officer shall be submitted promptly to the court. The court shall promptly enter an order approving the plan or modifying it and providing for restitution payments to the extent that the defendant is or may become reasonably able to make restitution, taking into account the factors enumerated in § 23A-28-5. The court thereafter may modify the plan at any time upon the defendant's request or upon the court's own motion.

Source: SL 1978, ch 177, § 5; SDCL
Supp, § 23-48A-4; SL 1978, ch 178, § 357.

23A-28-5. Factors considered in formulating restitution plan. The court service officer when assisting the defendant in preparing the plan of restitution, and the court before approving or modifying the plan of restitution, shall consider the physical and mental health and condition of the defendant, the defendant's age, the defendant's

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education, the defendant's employment circumstances, the defendant's potential for employment and vocational training, the defendant's family circumstances, the defendant's financial condition, the number of victims, the pecuniary damages of each victim, what plan of restitution will most effectively aid the rehabilitation of the defendant, and such other factors as may be appropriate. The court service officer shall attempt to determine the name and address of each victim and the amount of his pecuniary damages.

Source: SL 1978, ch 177, § 2; SDCL
Supp, § 23-48A-3; SL 1978, ch 178, § 357.

23A-28-6. Notice to victims of restitution plan. The court service officer shall provide each known victim a copy of the court's order approving or modifying the plan of restitution.

Source: SL 1978, ch 178, § 359; 1979, ch 159, § 2.

23A-28-7. Compliance with restitution plan as condition of probation or suspension — Payments to clerk. Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or suspension. Restitution payments shall be made to the office of the clerk unless otherwise ordered by the court.

Source: SL 1978, ch 177, § 2; SDCL
Supp, § 23-48A-2; SL 1978, ch 178, § 357.

23A-28-8. Failure to comply as violation of conditions of probation — Modification of plan. Failure of the defendant to comply with § 23A-28-3 or to comply with the plan of restitution as approved or modified by the court shall constitute a violation of the conditions of probation. Without limitation, the court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation period.

Source: SL 1978, ch 177, § 4; SDCL
Supp, § 23-48A-6; SL 1978, ch 178, § 360.

23A-28-9. Civil remedies of victims unimpaired — Restitution payments set off — Evidence of restitution inadmissible. Proceedings under this chapter shall not limit or impair the rights of victims to sue and recover damages from the defendant in a civil action. However, any restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event. The fact that restitution was required or made shall not be admissible as evidence in a civil action unless offered by such defendant.

Source: SL 1978, ch 178, § 361.

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23A-28-10. Limitations on duty of prosecutor — Victim's remedy by civil action. The prosecuting attorney has no obligation to investigate alleged pecuniary damages or to petition the court for restitution on behalf of a victim. In the event that the victim is not satisfied with the restitution plan approved or modified by the court, the victim's sole and exclusive remedy is a civil action.

Source: SL 1978, ch 178, § 362.

23A-28-11. Community service restitution — Plan preparation, approval and modification. If the sentencing court orders suspended imposition of sentence, suspended sentence or probation, the court may require as a condition that the defendant, in cooperation with the court services officer assigned to the defendant, promptly prepare a plan of community service restitution, including the number of work hours to be performed, where the community service work is to be performed, and the time necessary for completion of the community service work. The plan of community service restitution shall be submitted promptly to the court. The court shall promptly enter an order approving the plan or modifying it. The court thereafter may modify the plan at any time upon the defendant's own motion or upon the court's own motion.

Source: SL 1981, ch 191, § 2.

CHAPTER 23A-28A

PROFITS FROM CRIME — RESTITUTION

- | | |
|-------------|--|
| Section | |
| 23A-28A-1. | Contracts with accused or convicted persons for publications regarding crime — Attorney general to receive copy of contract and moneys owed. |
| 23A-28A-2. | Attorney general's proceedings under escrow provisions — Notice to accused or convicted person — Application by accused or convicted person for hearing — Orders by court. |
| 23A-28A-3. | Escrow account for benefit of victim — Civil action by victim. |
| 23A-28A-4. | Notices of escrow moneys held by attorney general. |
| 23A-28A-5. | Failure of victim to bring civil action — Action by governmental entity for costs of prosecution and imprisonment. |
| 23A-28A-6. | Reimbursement of governmental entities for costs of prosecution and imprisonment — Crediting of proceeds. |
| 23A-28A-7. | Acquittal of accused person — Payment of escrowed moneys. |
| 23A-28A-8. | No actions brought against escrowed moneys — Payment to convicted person. |
| 23A-28A-9. | Person not guilty as result of mental illness deemed convicted person. |
| 23A-28A-10. | Person unfit for trial as result of mental illness — Action by attorney general to determine disposition of escrow account. |
| 23A-28A-11. | Commencement of five-year period for bringing action. |
| 23A-28A-12. | Charges and costs of attorney general deducted from escrow account. |
| 23A-28A-13. | Legal representation of accused or convicted person — Use of escrowed moneys. |
| 23A-28A-14. | Acts by accused or convicted person to defeat purpose of chapter void. |

23A-28A-1. Contracts with accused or convicted persons for publications regarding crime — Attorney general to receive copy of contract and moneys owed. Every person, firm, corporation, part-

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nership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of any movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression by the accused or convicted persons thoughts, feelings, opinion or motions regarding such crime, shall submit a copy of such contract to the attorney general and pay over to the attorney general any moneys or other personal property which would otherwise, by terms of such contract, be owing to the person so accused or convicted, his representatives or assignees.

Source: SL 1982, ch 184, § 1.

23A-28A-2. Attorney general's proceedings under escrow provisions — Notice to accused or convicted person — Application by accused or convicted person for hearing — Orders by court. When any contract described in § 23A-28A-1 is submitted to the attorney general or the attorney general receives information of the existence of such a contract, notice of intent to proceed under the provisions of this chapter shall be given by the attorney general, if he contends such contract is within the purview of this chapter, to any accused or convicted person who is a party in interest in the contract and to all other persons known to have any interest in the contract. Within thirty days after service of notice, any accused or convicted person claiming the right to possession of such moneys or other personal property under the contract may make application to any circuit court for permission to show cause why said moneys or other personal property should not be paid over to the attorney general and placed in escrow under the terms of this chapter. Any show cause proceedings shall be set for hearing on a day not more than thirty days therefrom; at the hearing any accused person, convicted person, or party in interest who has made application may show by competent evidence that the money or personal property is not subject to being escrowed under the terms of this chapter. If the court finds that the moneys and personal property are not subject to the escrow provisions under this chapter, the court shall order that the escrow provisions of this chapter do not apply; and the court shall order the escrowing of the moneys if it determines that such moneys and personal property are subject to the escrow provisions of this chapter. The procedure governing any proceedings, except as herein provided, shall be conducted pursuant to "Title 15."

Source: SL 1982, ch 184, § 1A.

23A-28A-3. Escrow account for benefit of victim — Civil action by victim. The attorney general shall deposit such moneys in an escrow account and shall escrow such personal property in an appropriate manner for the benefit of and payable to any victim or legal representative of any victim of crimes committed by such convicted

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person, or by such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives.

Source: SL 1982, ch 184, § 2.

23A-28A-4. Notices of escrow moneys held by attorney general. The attorney general, at least once every year for five years from the date he received such moneys or other properties, shall cause to have published a legal notice in newspapers of general circulation in the county wherein the crime was committed advising victims that escrow moneys or other property are now available to satisfy money judgments pursuant to this chapter. The attorney general may, in his discretion, provide for such additional notice as he deems necessary.

Source: SL 1982, ch 184, § 3.

23A-28A-5. Failure of victim to bring civil action — Action by governmental entity for costs of prosecution and imprisonment. If a victim or legal representative of any victim of crimes committed by such convicted person fails to bring a civil action after four years from the date of legal publication, any governmental entity incurring the cost of prosecuting and convicting the accused, or incurring the cost of the convicted person's imprisonment has one year in which to bring a civil action in a court of competent jurisdiction and recover money judgment for damages against such person or his representatives, to be paid or satisfied from the escrow account.

Source: SL 1982, ch 184, § 4.

23A-28A-6. Reimbursement of governmental entities for costs of prosecution and imprisonment — Crediting of proceeds. Moneys or personal property obtained by governmental entities pursuant to this chapter shall be reimbursement for actual costs of prosecution and imprisonment and shall be reimbursed to the agency account from which funds were originally expended.

Source: SL 1982, ch 184, § 13.

23A-28A-7. Acquittal of accused person — Payment of escrowed moneys. Upon dismissal of charges or acquittal of any accused person the attorney general shall immediately pay over or satisfy to such accused person the moneys or other property in the escrow account established on behalf of such accused person.

Source: SL 1982, ch 184, § 5.

23A-28A-8. No actions brought against escrowed moneys —

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Payment to convicted person. Upon a showing by any convicted person that five years have lapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to this Act, the attorney general shall immediately pay over or satisfy any moneys or other property in the escrow account to such person or his legal representatives.

Source: SL 1982, ch 184, § 6.

23A-28A-9. Person not guilty as result of mental illness deemed convicted person. For purposes of this chapter, a person determined to be not guilty as a result of the defense of mental illness or defect pursuant to chapter 23A-10 of the criminal procedure laws shall be deemed to be a convicted person.

Source: SL 1982, ch 184, § 7.

23A-28A-10. Person unfit for trial as result of mental illness — Action by attorney general to determine disposition of escrow account. If it is found pursuant to chapter 23A-10A, that a person accused of a crime is unfit to proceed as a result of mental illness or defect because such person lacks the capacity to understand the proceedings against him or to assist in his own defense, the attorney general shall bring an action under the civil procedure laws and rules of this state to determine the disposition of the escrow account.

Source: SL 1982, ch 184, § 8.

23A-28A-11. Commencement of five-year period for bringing action. Notwithstanding any inconsistent provision of the civil procedure laws and rules with respect to the timely bringing of an action, the five-year period provided for in this chapter does not begin to run until an escrow account has been established.

Source: SL 1982, ch 184, § 9.

23A-28A-12. Charges and costs of attorney general deducted from escrow account. Notwithstanding the foregoing provisions of this chapter, the attorney general may deduct from the escrow account, a sum equal to the service charges for the account and the actual costs of publication incurred by the attorney general prior to any other distribution of moneys or other property.

Source: SL 1982, ch 184, § 10.

23A-28A-13. Legal representation of accused or convicted person — Use of escrowed moneys. Notwithstanding the foregoing provisions of this chapter, the attorney general shall transfer proceeds from an escrow account to any person accused or convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that the proceeds shall be used for the exclusive pur-

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pose of retaining legal representation at any stage of the proceedings against such person, including the appeals process, after first making adequate provisions to protect the victims of the crime pursuant to § 23A-28A-4.

Source: SL 1982, ch 184, § 11.

23A-28A-14. Acts by accused or convicted person to defeat purpose of chapter void. Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this chapter is void as against the public policy of this state.

Source: SL 1982, ch 184, § 12.

* * *

SUBPOENA AND ATTENDANCE OF WITNESSES

19-5-1. Fees and mileage payments of witnesses. Every witness shall be entitled to receive, for each day's attendance before any court, board, or tribunal, except judges and magistrates acting as committing magistrates, in all civil and criminal cases, ten dollars, and for each day's attendance in magistrate's court or before any judge acting as a committing magistrate, eight dollars, and for each mile actually traveled by the usual route of travel, each way fifteen cents. Such mileage shall be limited to the distance from the place of trial to the point where such witness first entered the state, if he comes from without the state. In all criminal cases involving the violation of a state law, witness fees on the part of the state shall be paid by the proper county, and the fees of material witness on the part of the defendant shall be paid by the county unless otherwise ordered by the court. In cases involving the violation of an ordinance, the local unit of government passing the ordinance shall pay the witness fees unless otherwise ordered by the court.

Source: SDCL; SL 1983, ch 164.

* * *

22-11-19. Tampering with a witness. A person who, threatens to injure any person or property, or with intent to influence a witness, offers, confers or agrees to confer any benefit on a witness or prospective witness in an official proceeding to induce the witness to:

- (1) Testify falsely;
 - (2) Withhold any testimony, information, document or thing;
 - (3) Elude legal process summoning him to testify or supply evidence; or
 - (4) Absent himself from an official proceeding to which he has been legally summoned,
- is guilty of tampering with a witness. Tampering with a witness is a Class 6 felony.

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CHAPTER 22-30A

THEFT

22-30A-21. Law enforcement officer retaining seized property as theft. No state, county or municipal law enforcement officer may retain or dispose of property that has been seized or confiscated unless he retains or disposes of such property pursuant to law or a court order. A violation of this section constitutes theft pursuant to § 22-30A-1.

Source: SL 1983, ch 177.

* * *

CHAPTER 23A-12

(Rule 15) DEPOSITIONS

23A-12-9. Videotape of young sex crime victim's testimony at preliminary hearing — Use at trial. Notwithstanding the provisions of § 23A-44-16, if a defendant has been charged with a violation of subdivision (5) of § 22-22-1, § 22-22-7, § 22-22-19, § 22-22-19.1 or § 22-22-23, if the victim is a person fifteen years of age or less, the prosecuting attorney may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on videotape. The scope and manner of the examination and cross-examination shall be such as would be allowed at the trial.

The application for the order shall be in writing and made at least three days before the preliminary hearing.

Upon timely receipt of the application, the court shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

If at the time of trial the court finds that further testimony would cause the victim emotional trauma, or that the victim is otherwise unavailable within the meaning of § 19-16-29, or that such testimony would in the opinion of the court be substantially detrimental to the well-being of the victim, the court may admit the videotape of the victim's testimony at the preliminary hearing as former testimony under § 19-16-30.

Source: SL 1983, ch 184, § 1.

23A-12-10. Hearing to videotape testimony as to additional evidence. Upon timely receipt of a notice that additional evidence has been newly discovered and for good cause shown, the court may order an additional hearing to videotape the victim's testimony relevant to the newly discovered evidence.

Source: SL 1983, ch 184, § 2.

CHAPTER 23A-24

CONDUCT OF TRIAL

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23A-24-6. Minor's testimony as to sexual offense involving child — Closing. Any portion of criminal proceedings at which a minor is required to testify concerning rape of a child, sexual contact with a child, child abuse involving sexual abuse or any other sexual offense involving a child may be closed to all persons except the parties and officers of the court and authorized representatives of the news media, unless the court, after proper hearing, determines that the minor's testimony should be closed to the news media in the best interest of the minor.

Source: SL 1983, ch 211, § 1.

* * *

25-9A-44. Short title. This chapter may be cited as the Revised Uniform Reciprocal Enforcement of Support Act.

Source: SL 1951, ch 43, § 21; 1953, ch 41, § 29; SDC Supp 1960, § 14.0801; SDCL, § 25-9-31; SL 1980, ch 191, § 44.

CHAPTER 25-10

PROTECTION FROM DOMESTIC ABUSE

Section	
25-10-1.	Definitions.
25-10-2.	Application for relief — Filing — Venue.
25-10-3.	Petition for protection order — Parties — Allegations — Affidavit — Pending action — Costs.
25-10-4.	Hearing — Time — Service on respondent.
25-10-5.	Relief authorized on finding abuse — Time limitation.
25-10-6.	Ex parte temporary protection order.
25-10-7.	Limited duration of temporary order — Service on respondent.
25-10-8.	Security not required of petitioner — Exception.
25-10-9.	Departure of petitioner from household not waiving right to relief.
25-10-10.	Modification of order.
25-10-11.	Real estate titles not affected.
25-10-12.	Delivery of order to law enforcement agencies.
25-10-13.	Violation of order as misdemeanor.
25-10-14.	Citation of chapter.
25-10-15.	Domestic abuse grant program — Definitions.
25-10-16.	Award of domestic abuse grants — Recipients — Administrative costs.
25-10-17.	Local support of programs required.
25-10-18.	Guidelines for awarding grants.
25-10-19.	Services provided by local programs.
25-10-20.	Confidentiality of victims receiving services.
25-10-21.	Prohibited services.

25-10-1. Definitions. Terms used in this chapter, unless a different meaning is clearly indicated by the context, mean:

- (1) "Domestic abuse," physical harm, bodily injury or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury between family or household members;
- (2) "Family or household members," spouses, former spouses or persons eighteen years or older related by consanguinity, adoption or law and living in the same household;

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- (3) "Protection order," an order restraining any family or household member from committing any act of domestic abuse or an order excluding any family or household member from the dwelling or residence of another family or household member, whether or not the dwelling or residence is shared. A protection order has a duration of one year or less; and
- (4) "Temporary protection order," an order restraining any family or household member from committing any act of domestic abuse or an order excluding any family or household member from the dwelling or residence of another family or household member, whether or not the dwelling or residence is shared. A temporary protection order has a duration of fourteen days.

Source: SL 1981, ch 198, § 1.

25-10-2. Application for relief — Filing — Venue. An application for relief under this chapter may be filed in circuit court. Venue lies where any party to the proceedings resides.

Source: SL 1981, ch 198, § 2.

25-10-3. Petition for protection order — Parties — Allegations — Affidavit — Pending action — Costs. There exists an action known as a petition for a protection order in cases of domestic abuse. Procedures for the action are as follows:

- (1) A petition under this section may be made by any family or household member against any other family or household member.
- (2) A petition shall allege the existence of domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse.
- (3) A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition or other action between the parties.
- (4) If a petitioner files an affidavit with his petition stating that he does not have the funds available to pay the cost of filing and service, the petition shall be filed and served without payment of costs. If a petition is filed and served without payment of costs, the court shall determine at the hearing described in § 25-10-5 if the petitioner is indigent. If the court finds that the petitioner is not indigent, the court may order the petitioner to pay the costs of filing and service.

Source: SL 1981, ch 198, § 3.

25-10-4. Hearing — Time — Service on respondent. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. Personal service of the petition, affidavit and notice for hearing shall be made on the respondent not less than five days prior to the hearing.

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25-10-5. Relief authorized on finding abuse — Time limitation. Upon notice and a hearing, if the court finds by a preponderance of the evidence that domestic abuse has taken place, the court may provide relief as follows:

- (1) Restrain any party from committing acts of domestic abuse;
- (2) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner for a period not to exceed thirty days;
- (3) Award temporary custody or establish temporary visitation with regards to minor children of the parties;
- (4) Establish temporary support for minor children of the parties or a spouse;
- (5) Recommend that either or both of the parties obtain counseling;
- (6) Order other relief as the court deems necessary for the protection of a family or household member, including orders or directives to a sheriff or constable.

Any relief granted by the order for protection shall be for a fixed period and may not exceed one year, except as limited in subdivision (2).

Source: SL 1981, ch 198, § 5.

25-10-6. Ex parte temporary protection order. When an affidavit filed with an application under this chapter alleges that immediate and irreparable injury, loss or damage will result before an adverse party or his attorney can be heard in opposition, the court may grant an ex parte temporary protection order pending a full hearing and granting relief as the court deems proper, including an order:

- (1) Restraining any family or household member from committing acts of domestic abuse;
- (2) Excluding any family or household member from the dwelling or the residence of the petitioner.

Source: SL 1981, ch 198, § 6.

25-10-7. Limited duration of temporary order — Service on respondent. An ex parte temporary protection order is effective for a period of fourteen days. The respondent shall be personally served forthwith with a copy of the ex parte order along with a copy of the petition, affidavit and notice of the date set for the hearing.

Source: SL 1981, ch 198, § 7.

25-10-8. Security not required of petitioner — Exception. The court may not require an undertaking or other security of any party to a petition for an order of protection other than in exceptional circumstances.

Source: SL 1981, ch 198, § 8.

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25-10-9. Departure of petitioner from household not waiving right to relief. A person's right to apply for relief under this chapter may not be affected by the departure of that person from the residence or household to avoid abuse.

Source: SL 1981, ch 198, § 9.

25-10-10. Modification of order. Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Source: SL 1981, ch 198, § 10.

25-10-11. Real estate titles not affected. No order issued pursuant to this chapter may affect title to real estate.

Source: SL 1981, ch 198, § 11.

25-10-12. Delivery of order to law enforcement agencies. The petitioner may deliver an order for protection granted pursuant to this chapter within twenty-four hours to the local law enforcement agency having jurisdiction over the residence of the petitioner. Each appropriate law enforcement agency shall make available to other law enforcement officers information as to the existence and status of any order for protection issued pursuant to this chapter.

Source: SL 1981, ch 198, § 12.

25-10-13. Violation of order as misdemeanor. Whenever a temporary protection order is granted pursuant to this chapter, and the respondent or person to be restrained knows of the order, violation of the order is a Class 2 misdemeanor. Any proceeding under this chapter shall be in addition to other civil or criminal remedies.

Source: SL 1981, ch 198, § 13.

25-10-14. Citation of chapter. This chapter may be cited as the Protection from Domestic Abuse Act.

Source: SL 1981, ch 198, § 14.

25-10-15. Domestic abuse grant program — Definitions. Terms used in §§ 25-10-15 to 25-10-21, inclusive unless a different meaning is clearly indicated by the context, mean:

- (1) "Domestic abuse," physical harm, bodily injury or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury between family or household members;
- (2) "Family or household members," spouses, former spouses, persons related by consanguinity, adoption or law and living in the same household.

Source: SL 1983, ch 204, § 2.

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25-10-16. Award of domestic abuse grants — Recipients — Administrative costs. The board of county commissioners shall award domestic abuse grants to domestic abuse programs that are locally controlled. Grants may be awarded to either local governmental or nongovernmental agencies or organizations. The county may retain ten percent of the county domestic abuse program funds for administrative costs.

Source: SL 1983, ch 204, § 5.

county domestic abuse program fund,
§ 25-1-10.

Cross-References.

Marriage license fees, portion credited to

25-10-17. Local support of programs required. A minimum of twenty percent of the operational costs of a local domestic abuse program shall come from the local community served by the program. A local contribution may include in-kind contributions.

Source: SL 1983, ch 204, § 6.

25-10-18. Guidelines for awarding grants. Domestic abuse grants shall be awarded by the board of county commissioners within the following guidelines:

- (1) Equitable distribution of funds according to need;
- (2) Distribution of funds through grants to private, nonprofit organizations;
- (3) Assurance of proper fiscal control and fund accounting procedures;
- (4) Exchange of technical assistance with other related programs;
- (5) Assurance of proper recordkeeping and reporting procedures; and
- (6) Assurance of full opportunity for active citizen participation.

Source: SL 1983, ch 204, § 7.

25-10-19. Services provided by local programs. Local domestic abuse programs receiving domestic abuse grants shall provide services that include but are not limited to the following:

- (1) Emergency shelter for victims of domestic abuse and their minor children;
- (2) Information and referral services for victims of domestic abuse and other family or household members; and
- (3) Education and training for members of the community on matters which relate to domestic abuse.

Source: SL 1983, ch 204, § 8.

25-10-20. Confidentiality of victims receiving services. The board of county commissioners shall provide for the confidentiality of victims of domestic abuse receiving services funded pursuant to §§ 25-10-15 to 25-10-21, inclusive.

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25-10-21. Prohibited services. No funds authorized or awarded under the provisions of §§ 25-10-15 to 25-10-21, inclusive, shall be used to promote or pay, directly or indirectly, for the elective termination of a pregnancy, sterilization or control of birth by medication or device.

Source: SL 1983, ch 204, § 10.

Category	Citation
1. Victim Compensation Program	29-13-101 et seq.
1.1 Responsible Agency	29-13-102(c)
1.2 Eligible Claimants	29-13-105
1.3 Losses Covered	29-13-106
1.4 Minimum and Maximum Award	29-13-106(d), 29-13-107(4)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	29-13-108(e)
1.7 Filing of Claim - Time Limit	29-13-108(a)
1.8 Emergency Award	29-13-114
1.9 Funding	40-24-107
2. Restitution	
2.1 Sentencing Option	40-35-304
2.2 Mandatory Condition of Probation	39-3-405(a) (for burglary)
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	40-20-116 (for property offenses)
2.5 Administration/Enforcement	41-6-101 et seq. (restitution centers); 41-6-201 (restitution industries)
3. Escrow and Forfeiture of Offender Profits	29-13-201 et seq.
4. Witness Fees	24-4-101 et seq.; 40-17-112; 40-25-106; 40-25-129
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	39-5-115
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	40-35-207(8)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	40-17-118
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	39-2-104(b)(1)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	39-2-105 (assault on spouse)
14.1 Protective Orders	36-1201, 36-1205 et seq.
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	29-13-117 (by state board of claims on compensation claims)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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Tennessee Code Annotated

CHAPTER 13

CRIMINAL INJURIES COMPENSATION

SECTION.

PART 1—GENERAL PROVISIONS

- 29-13-101. Short title.
- 29-13-102. Definitions.
- 29-13-103. Jurisdiction of circuit courts — Disqualification of judges.
- 29-13-104. Offenses to which compensation applies.
- 29-13-105. Persons eligible for compensation.
- 29-13-106. Losses or expenses reimbursable.
- 29-13-107. Standards of compensation.
- 29-13-108. Filing claims for compensation.
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SECTION.

29-13-117. Statistical reports.

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- 29-13-203. Payment of moneys to person convicted of crime.
- 29-13-204. Period within which claim must be made.
- 29-13-205. Payment of moneys for purpose of retaining legal representation.
- 29-13-206. Actions taken to defeat purpose of law.
- 29-13-207. Limitations on level of compensation.
- 29-13-208. Promulgation of rules and regulations.

PART 1—GENERAL PROVISIONS

29-13-101. Short title. — This chapter and § 40-3207 shall be known and may be cited as the "Criminal Injuries Compensation Act of 1976." [Acts 1976 (Adj. S.), ch. 736, § 1; T.C.A., §§ 23-3501, 23-35-101.]

29-13-102. Definitions. — For the purposes of this chapter and § 40-3207:

- (a) "Child" shall mean an unmarried person who is under eighteen (18) years of age, and includes a stepchild or an adopted child.
- (b) "Claimant" shall mean any person or persons filing a claim for compensation under this chapter on his or their own behalf, the guardian of a victim if the victim is a child, the legal representative of the estate of a deceased victim, or the dependents of the victim.
- (c) "Court" shall mean the circuit courts of the state of Tennessee, for the purposes of filing a claim, and any court of the state which has the jurisdiction to try a crime against person or property, for the purpose of assessing the costs provided for in § 40-3207 except general sessions courts or municipal courts may not impose such costs.
- (d) "Dependents" shall mean such relatives of a deceased victim as were receiving substantial support or needed services from the victim at the time of the victim's death, and shall include the child of such victim born after his death.

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- (e) "Family," when used with reference to a person, shall include:
 - (1) Any person related to such person within the third degree of consanguinity or affinity; or
 - (2) Any person living in the same household as such person.
- (f) "Offender" shall mean a person who has or is alleged to have committed a crime.
- (g) "Out of pocket expenses" shall mean unreimbursed or unreimbursable expenditures or indebtedness reasonably incurred for medical care or other services reasonably necessary as a result of the personal injury or death upon which a claim is based.
- (h) "Relative" shall mean a spouse, parent, grandparent, stepparent, child, grandchild, brother, sister, half brother, half sister and a spouse's parents or stepparents.
- (i) "Victim" shall mean a person who suffers personal injury or death as a direct and proximate result of any act of a person which is within the description of any of the offenses specified in § 29-13-104. [Acts 1976 (Adj. S.), ch. 736, § 2; 1977, ch. 427, § 1; T.C.A., §§ 23-3502, 23-35-102; impl. am. Acts 1979, ch. 68, § 3.]

Cross-References. Definitions for use in Injuries Compensation Act, 7 Mem. St. U.L. part 2 of this chapter, § 29-13-201. Rev. 241.

Law Reviews. Tennessee's Criminal

29-13-103. Jurisdiction of circuit courts — Disqualification of judges. — (a) The circuit courts of the various circuits of the state of Tennessee shall, pursuant to the provisions of this chapter, have jurisdiction to determine and award compensation to a claimant.

(b) Such claims shall be brought in the circuit court which has territorial jurisdiction of the county in which the claimant lives.

(c) A judge who has, at any time as a criminal court judge, heard a criminal case arising from a crime alleged as the basis of such claim shall not sit in the determination of such claim.

(d) A judge who has heard such a claim shall not, at any time as a criminal court judge sit in a criminal case arising from a crime alleged in such claim. [Acts 1976 (Adj. S.), ch. 736, § 3; T.C.A., §§ 23-3503, 23-35-103.]

Law Reviews. Tennessee's Criminal Injuries Compensation Act, 7 Mem. St. U.L. Rev. 241.

29-13-104. Offenses to which compensation applies. — The court shall order the payment of compensation to the claimant in accordance with the provisions of this chapter for personal injury to or death of the victim which resulted from:

- (1) An act committed in this state, which, if committed by a mentally competent, criminally responsible adult, would constitute a crime, provided that no act involving the use of a motor vehicle which results in injury to or death of another shall constitute a crime for the purposes of this chapter and § 40-3207, unless such injury or death was intentionally inflicted through the use of a motor vehicle;

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(2) An attempt to prevent or the actual prevention of a crime or an attempted crime in this state which the victim reasonably believed had occurred or was about to occur; or

(3) The apprehending of an individual who had committed a felony in the presence of the victim, if, under the circumstances, the victim could have reasonably believed that a felony had occurred. [Acts 1976 (Adj. S.), ch. 736, § 4; T.C.A., §§ 23-3504, 23-35-104.]

Section to Section References. This section is referred to in §§ 29-13-102 and 29-13-109.

Law Reviews. Tennessee's Criminal Injuries Compensation Act, 7 Mem. St. U.L. Rev. 241.

29-13-105. Persons eligible for compensation. — (a) Except as otherwise provided, the following person or persons shall be eligible for compensation pursuant to this chapter:

- (1) A victim of a crime;
- (2) In the case of the death of the victim, a dependent of the victim;
- (3) In the case of the death of the victim, where the compensation is for unreimbursed or unreimbursable funeral or burial expenses, to the legal representative of the estate of the victim; or
- (4) In the case of the personal injury of the victim, where the compensation is for expenses incurred by any person responsible for the maintenance of that victim, to that person.

(b) A person who is criminally responsible for the crime upon which a claim is based, or an accomplice of such person, or anyone who has contributed to the crime in any respect, shall not be eligible to receive an award with respect to a claim under this chapter.

(c) No compensation shall be awarded a victim who was, at the time of the personal injury or death, a member of the offender's family, if the court, at its discretion, determines that any benefit would accrue, either directly or indirectly, to the offender. [Acts 1976 (Adj. S.), ch. 736, § 5; T.C.A., §§ 23-3505, 23-35-105.]

29-13-106. Losses or expenses reimbursable. — (a) The court shall order the payment of compensation under this chapter for:

- (1) Expenses actually and reasonably incurred as a result of the personal injury or death of the victim, including, but not limited to, actual expenditures of moneys for or indebtedness resulting from medical services, hospital services, funeral and burial expenses;
- (2) Loss of past earnings;
- (3) Pecuniary loss to the dependents of a deceased victim; and
- (4) Any other pecuniary loss resulting from the personal injury or death of the victim which the court determines to be reasonable, including the filing fee required by § 29-13-108(b).

(b) In no case will any compensation be awarded for any damage to real or personal property. For the purposes of this section, eyeglasses, contact lenses, hearing aids, or artificial prosthetic devices shall not be considered personal property.

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(c) No compensation shall be awarded for any personal injury or loss alleged to have been incurred as a result of pain and suffering, except for victims of the crime of rape and victims of crime involving sexual deviancy.

(d) No award shall be made unless the claimant has incurred a minimum out of pocket loss of one hundred dollars (\$100) or has lost at least two (2) continuous weeks earnings or support, unless the court determines that the interest of justice would not be served by such a limitation.

(e) No compensation shall be awarded to the victim, or in the case of death, to dependents, in an amount in excess of ten thousand dollars (\$10,000). All awards granted under subsections (a)(1) through (5) of this section shall be aggregated in determining this amount.

(f) Any award shall be reduced by the amounts of payment already received or any amounts which claimant is legally entitled to receive as a result of the injury:

- (1) From or on behalf of the offender;
- (2) From any other public or private source; or
- (3) As an emergency award pursuant to § 29-13-114.

It is the intent of this subsection to prohibit double recoveries by criminal victims but it shall not be construed to prohibit recovery of compensation under this chapter if the recovery from the sources set forth in subdivisions (1) and (2) of this subsection is insufficient to reimburse the victim for his total compensable injuries as set forth in this chapter. Recoveries under subdivisions (1) and (2) of this subsection shall be considered as primary indemnification, and recoveries under subsection (a) of this section shall be limited to compensating for injuries over and above any recoveries under subdivisions (1) and (2) of this subsection.

(g) If two (2) or more persons are entitled to compensation as a result of the death of the victim, the court shall apportion the amounts among claimants in proportion to their loss. [Acts 1976 (Adj. S.), ch. 736, § 6; T.C.A., §§ 23-3506, 23-35-106; Acts 1981, ch. 163, § 4.]

29-13-107. Standards of compensation. — For purposes of determining the amount of compensation to be awarded under § 29-13-106, the court shall utilize the following standards in order to ensure the uniform application of this chapter:

(1) Any award made for partial or total disabilities proximately caused by a violent crime is to be based upon those schedules of compensation allowable by the workers' compensation statutes, found in § 50-6-207, in effect at the time of the commission of the act giving rise to such claim, for disabilities of a similar nature.

(2) Excepting claims for disabilities, death, or pain and suffering where the commission of a sexually-oriented crime is involved, awards are to be payable only for those pecuniary losses actually and reasonably incurred as the result of personal injuries received through the commission of a violent crime.

(3) Any award based on the pain and suffering experienced by a claimant victimized by a sexually-oriented crime is to be made in an amount deemed necessary and appropriate, not to exceed two thousand five hundred dollars (\$2,500), taking into account the particular circumstances involved in such crime.

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(4) The amount of an award or awards payable for the death of a victim is to be in the aggregate of ten thousand dollars (\$10,000). [Acts 1976 (Adj. S.), ch. 736, § 7; 1979, ch. 331, § 2; impl. am. Acts 1980 (Adj. S.), ch. 534, § 1; T.C.A., §§ 23-3507, 23-35-107; Acts 1981, ch. 163, § 5.]

29-13-108. Filing claims for compensation. — (a) A claim for compensation shall be filed not later than one (1) year after the occurrence of the crime upon which the claim is based or one (1) year after the death of the victim; provided, however, that upon good cause, the court may, either before or after the expiration of the filing period, extend the time for filing such claim.

(b) Each claim shall be filed in the office of the clerk of the court, in person or by mail, and shall be accompanied by a filing fee of five dollars (\$5.00). Such fee shall be refunded from the criminal injuries compensation fund as a reimbursement expense under § 29-13-106(a) when the court awards compensation under § 29-13-109. The claim shall set forth the name of the victim and that of the claimant, if different than that of the victim, the address of the victim and/or claimant, the county wherein the crime is alleged to have occurred, the name, if known, of the alleged offender, a brief statement of the alleged crime, the date and time the alleged crime was reported to the police, and the nature of compensation claimed.

(c) Within five (5) days after receipt of the claim, the clerk shall notify the district attorney general and the alleged offender or offenders, if described in the claim. Such notification shall be in writing, with copies of such material as is included in the claim or in support thereof. The clerk shall, at least ten (10) days prior to the date set for the hearing, by certified mail, notify the claimant of the date and time of any hearing on such claim.

(d) Upon application of the district attorney general or of the alleged offender or offenders, the court shall suspend proceedings under this chapter until such claim is withdrawn or until a prosecution for an offense arising out of such act is no longer pending or imminent. The court may suspend proceedings in the interest of justice if a civil action arising from such act is pending or imminent.

(e) No claim shall be filed until the crime upon which the claim is based shall have been reported by the victim, a relative of the victim, or a member of his family to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the court, for good cause shown, finds the delay to have been justified. Failure by the victim to report the crime due to physical inability to do so shall constitute good cause. [Acts 1976 (Adj. S.), ch. 736, § 8; T.C.A., §§ 23-3508, 23-35-108; modified.]

29-13-109. Judicial determination of the claim. — (a) The district attorney general shall investigate the claim prior to the opening of formal court proceedings, and shall present any information he may have in support of or in opposition to the claim. The claimant may present evidence and testimony on his own behalf, or he may retain counsel.

(b) No order may be made under this section unless the claimant shall have shown to the court, supported by a preponderance of the evidence, that:

(1) Such an act did occur; and

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(2) The injury or death proximately resulted from such act.

(c) An order may be made under this section whether or not any person is prosecuted or convicted or acquitted of any offense arising out of such act, or if such act is the subject of any other legal action. Furthermore, the apprehension of an offender is not a condition of award. However, no award shall be made unless the claimant fully cooperates with the police and district attorney general in any prosecution of the offender, which prosecution occurs either before or after the payment of such compensation. The court may amend its orders under the provision of subsection (e) in furtherance of this policy.

(d) Except as otherwise provided, any order for the payment of compensation may be made on such terms as the court deems appropriate.

(e) The orders and decisions of the court shall be final. However, the court may, at any time, on its own motion or on the application of the claimant, vary any order for the payment of compensation made under this chapter in such manner as the court thinks fit, whether as to the terms of the order or by increasing the amount of the award, or otherwise.

(f) All decisions of the court under this chapter shall be in writing, setting forth the name of the claimant, the name of the victim if different than that of the claimant, the amount of compensation and manner of payment, and the reasons for the decision. The clerk of the court shall, within five (5) days of receipt of the order, notify the claimant in writing of the decision, and shall forward to the board of claims a certified copy of the decision within five (5) days after the receipt of the order. The board of claims shall, without further authorization, subject to available funds, pay the claimant the amount, and in the manner determined by the court. Such payment shall be made from the fund as set forth in § 29-13-116.

(g) In determining whether to make an order under this section, or the amount of the award, the court may consider any circumstances reasonably relevant to the criminal act, including the behavior of the victim which directly or indirectly contributed to his injury or death, unless such injury or death resulted from the victim's attempt to prevent the commission of a crime or an attempted crime or to apprehend or attempt to apprehend an offender, as set forth in § 29-13-104(b) and (c).

(h) For the purposes of this chapter, a person shall be deemed to have intended an act, notwithstanding that by reason of age, insanity, drunkenness, or otherwise, he was legally incapable of forming a criminal intent. [Acts 1976 (Adj. S.), ch. 736, § 9; T.C.A., §§ 23-3509, 23-35-109; modified.]

Law Reviews. Tennessee's Criminal Injuries Compensation Act, 7 Mem. St. U.L. Rev. 241.

29-13-110. Medical reports. — (a) The claimant shall, prior to any hearing thereon, submit reports, if known to be available, from all hospitals, medical institutions, physicians or surgeons who treated or examined the victim for the injury for which compensation is sought.

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(b) If, in the opinion of the court, an examination of the victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the court may appoint a duly qualified impartial physician to make such an examination and report, with due regard for the religious tenets of the claimant. [Acts 1976 (Adj. S.), ch. 736, § 10; T.C.A., §§ 23-3510, 23-35-110.]

Law Reviews. Tennessee's Criminal Injuries Compensation Act, 7 Mem. St. U.L. Rev. 241.

29-13-111. Manner of payment — Exemption from execution or attachment. — (a) All payments shall be made in a lump sum, except for those claims involving death or protracted disability, for which the court may order periodic payment of compensation for the loss of earnings or support.

(b) If the claimant is a child, or is incompetent, the court shall order payment to a relative, guardian, or the claimant's attorney. In such situations, the payee shall make a periodic accounting of all funds to the court which directed the payment, such accounting to be at least once every six (6) months.

(c) No award pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury or death which is the basis of the claim. [Acts 1976 (Adj. S.), ch. 736, § 11; T.C.A., §§ 23-3511, 23-35-111.]

Law Reviews. Tennessee's Criminal Injuries Compensation Act, 7 Mem. St. U.L. Rev. 241.

29-13-112. Attorney's fees. — (a) The court may, as a part of any order entered under this chapter, determine and allow reasonable attorney's fees, which shall not exceed fifteen percent (15%) of the amount awarded as compensation, to be paid in addition to the amount of such compensation, to the attorney representing the claimant.

(b) There shall be no compensation to an attorney whose fees are paid for under any federally funded legal services program, or any such program funded by the state of Tennessee.

(c) It shall be unlawful for any attorney to ask for, contract for or receive any larger sum than the amount so allowed under this section. [Acts 1976 (Adj. S.), ch. 736, § 12; T.C.A., §§ 23-3512, 23-35-112.]

Law Reviews. Tennessee's Criminal Injuries Compensation Act, 7 Mem. St. U.L. Rev. 241.

29-13-113. Subrogation. — (a) Whenever any person is convicted of an offense and an order for the payment of compensation is or has been made under this chapter for a personal injury or death resulting from the act constituting such offense, the state of Tennessee may institute an action against such person for the recovery of the whole or any specified part of the compensation in the circuit courts of the state of Tennessee in any county, in

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a state, or in a federal court of any other state or district in which such person resides.

(b) An order for the payment of compensation under this chapter shall not affect the right of any person to recover damages from any other person by a civil action for the injury or death.

(c) As a condition for the receipt of a criminal injuries compensation award, the recipient of an award shall agree, by such form as the board of claims may direct, to cooperate fully with appropriate officials of the state should the state proceed to institute an action against the criminal offender to recover the whole or any specified part of the compensation awarded.

(d) Should any person receiving an award for criminal injuries compensation choose to exercise his or her right to recover damages in civil court for injury or death, he or she must notify in advance the attorney general and reporter, in order to give the state an opportunity to join such action in an attempt to recover its subrogated interest. [Acts 1976 (Adj. S.), ch. 736, § 13; Acts 1980 (Adj. S.), ch. 628, § 1; T.C.A., §§ 23-3513, 23-35-113.]

Law Reviews. Tennessee's Criminal Injuries Compensation Act, 7 Mem. St. U.L. Rev. 241.

29-13-114. Emergency award. — (a) If it appears to the court, prior to any hearing on a claim, that

(1) Such claim is one with respect to which an award will probably be made; and

(2) Undue hardship will result to the claimant if immediate payment is not made; the court may make an emergency award to the claimant pending a final decision in the case.

(b) The amount of such emergency award shall not exceed five hundred dollars (\$500).

(c) The amount of such emergency award shall be deducted from any final award made to the claimant. The excess of the amount of such emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the state. [Acts 1976 (Adj. S.), ch. 736, § 14; T.C.A., §§ 23-3514, 23-35-114.]

Section to Section References. This section is referred to in § 29-13-106. **Law Reviews.** Tennessee's Criminal Injuries Compensation Act, 7 Mem. St. U.L. Rev. 241.

29-13-115. Penalty. — Any person who asserts a false claim under this chapter, knowing such claim to be false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine not exceeding five hundred dollars (\$500), nor more than six (6) months imprisonment, or both, and shall forfeit any benefit received and shall reimburse and repay the state for payments received or paid on his behalf pursuant to any of the provisions of this chapter. [Acts 1976 (Adj. S.), ch. 736, § 15; T.C.A., §§ 23-3515, 23-35-115.]

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29-13-116. Restriction of funds. — (a) No state funds shall be expended to effectuate the provisions of this chapter other than the fees and charges set forth in § 40-3207 and the contributions to the criminal injuries compensation fund made pursuant to chapter 36 of title 40.

(b) This section shall not be construed to prohibit the use of available federal funding. [Acts 1976 (Adj. S.), ch. 736, § 16(e); 1979, ch. 319, § 2; T.C.A., §§ 23-3516, 23-35-116.]

Cross-References. Criminal injuries Injuries Compensation Act, 7 Mem. St. U.L. compensation fund, § 40-3207.
Law Reviews. Tennessee's Criminal Rev. 241.

29-13-117. Statistical reports. — (a) The state board of claims shall compile, from records available to it and from those maintained by the circuit courts, all relevant statistics and other information which reflect the extent of compensation and other activities generated by operation of this chapter and § 40-3207.

(b) Within the first four (4) weeks of each legislative session, the board shall furnish to the judiciary committee of each house of the general assembly a report conveying such information compiled, to facilitate the continuing evaluation of the program established by the chapter and § 40-3207. [Acts 1976 (Adj. S.), ch. 736, § 17; T.C.A., §§ 23-3517, 23-35-117.]

Section to Section References. This section is referred to in § 40-3207.

PART 2—FUNDS RECEIVED AS RESULT OF COMMISSION OF CRIME

29-13-201. Definitions. — As used in this part:

(1) "Court of competent jurisdiction" shall mean the circuit courts of the state of Tennessee;

(2) "Victim" shall mean a person who suffers personal injury or death or a person who suffers loss of or injury to real or personal property as a direct and proximate result of any act of a person, which if committed by a mentally competent, criminally responsible adult, would constitute a crime. [Acts 1979, ch. 264, § 1a; T.C.A., § 23-35-201.]

Cross-References. Definitions, § 29-13-102.

29-13-202. Payment of moneys to department of revenue — Deposit of moneys in fund — Payment to victims of crime. — (a) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, radio or television presentation, live entertainment of any kind, or from the expression of such person's thoughts,

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feelings, opinions or emotions regarding such crime, shall pay over to the department of revenue any moneys which would otherwise, by terms of such contract, be owing to the person so accused or his representatives.

(b) The department shall deposit such moneys in the criminal injuries compensation fund established by § 40-3207, and shall earmark such moneys for the benefit of and payable to the victim of such crime (or in the case of the death of the victim, to his estate) committed by such person, provided that the victim, or the legal representative of his estate, within five (5) years of the date of the crime, brings a claim for the payment of compensation in accordance with § 29-13-108, and an order for the payment of compensation is entered on behalf of the claimant. [Acts 1979, ch. 264, § 1b; T.C.A., § 23-35-202.]

Section to Section References. This section is referred to in § 29-13-204.

29-13-203. Payment of moneys to person convicted of crime. — The department shall immediately pay over to the person convicted of the crime all moneys paid to such department pursuant to § 29-13-202(b) upon the order of a court of competent jurisdiction:

(1) After a showing by such person that five (5) years have elapsed from the date such moneys were paid to the department and further that no claims for compensation pursuant to § 29-13-108, relating to the crime for which such person was accused are pending; or

(2) Upon disposition of the criminal charges favorable to such person. [Acts 1979, ch. 264, § 1c; T.C.A., § 23-35-203.]

29-13-204. Period within which claim must be made. — Notwithstanding any inconsistent provision of law with respect to survival of civil actions, the five-year period for filing a claim for the payment of compensation as provided in § 29-13-202(b) shall not begin to run until all moneys have been paid over and such moneys have been earmarked in the criminal injuries compensation fund for the benefit of such victim. [Acts 1979, ch. 264, § 1d; T.C.A., § 23-35-204.]

29-13-205. Payment of moneys for purpose of retaining legal representation. — Notwithstanding the foregoing provisions of this part, the department shall make payments from such earmarked funds to any person convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process. [Acts 1979, ch. 264, § 1e; T.C.A., § 23-35-205.]

29-13-206. Actions taken to defeat purpose of law. — Any action taken by a person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this part shall be null and void as against the public policy of this state. [Acts 1979, ch. 264, § 1f; T.C.A., § 23-35-206.]

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29-13-207. Limitations on level of compensation. — Limitations upon the permissible level of compensation provided elsewhere in this chapter shall not apply to this part. [Acts 1979, ch. 264, § 1g; T.C.A., § 23-35-207.]

29-13-208. Promulgation of rules and regulations. — The department of revenue is hereby authorized to promulgate such rules and regulations as are necessary to insure the efficient and thorough performance of the duties imposed upon it by the provisions of this part and as are consistent with the provisions of this part. [Acts 1979, ch. 264, § 1h; T.C.A., § 23-35-208.]

* * *

40-24-107. Criminal injuries compensation fund. — (a) When any person is convicted of a crime of any nature after July 1, 1981, except those crimes for which the law imposes as a maximum possible punishment a fine of less than five hundred dollars (\$500) and no imprisonment, by any circuit court or comparable court of record with jurisdiction over criminal matters, there is levied a privilege tax of twenty-one dollars (\$21.00) in addition to any other costs or fees imposed in such action. Further, if any person is convicted of a crime of any nature after July 1, 1981, except those crimes for which the law imposes as a maximum possible punishment a fine of less than five hundred dollars (\$500) and no imprisonment, by any general sessions court or comparable court with jurisdiction over criminal matters, there is levied a privilege tax of ten dollars (\$10.00) in addition to any other costs or fees imposed by law in such actions. Nothing in this section shall be construed to apply to violations of the motor vehicle laws. This tax shall be collected by the clerks of the various courts from each person convicted, and all funds collected shall be paid over to the department of revenue for deposit in the fund established by this section, with the exception of one dollar (\$1.00) which shall be retained by the clerk to defray the expenses of collecting and processing these funds. Provided that, for purposes of this section the exemption contained in this subsection shall not be based on whether the person convicted of such crime receives the sentence, but rather shall be based on the maximum possible sentence imposed by the law.

(b) When an offender liable to pay the tax has been convicted and sentenced to a county correctional institution or program, or to an institution or program maintained by the department of correction, the clerk of court shall certify to the appropriate official as provided in this subsection whether payment of such tax has been made. If the offender liable to pay the tax has been convicted and sentenced to an institution or program maintained by the department of correction, the clerk of court shall certify to the commissioner of correction, in such form as the commissioner may direct, whether payment of such tax has been made. The commissioner shall then cause any amount owing to be collected from the prisoner during his period of confinement by the department of correction. If the offender liable to pay the tax has been convicted and sentenced to

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a correctional institution or program maintained by a county, the clerk of court shall certify to the county officer with supervisory authority over such institution or program whether payment of the tax has been made. Such county officer shall then cause any amount owing to be collected from the offender during his period of confinement. The commissioner of correction shall submit to the board of claims for its approval the form prescribed for the notification of the status of an offender's obligation under this section. The total sums collected shall be paid over to the clerk of court as provided in subsection (a) for deposit in the fund established by this section, with the exception of the amount specified in subsection (a) to be retained by the clerk of court to defray the expenses of collecting and processing these funds.

(c) The board of paroles may make an investigation of the financial and other circumstances of each offender who is to be released on parole. The board may order payment of a percentage of the offender's income not to exceed ten percent (10%), into the criminal injuries compensation fund established in this section, unless the interests of justice would not be served by such payments or such payments would not be possible for financial reasons. Such payments shall be in addition to the costs assessed in subsection (a). The board may modify such orders as it from time to time deems necessary. A summary report of the board's decision under this section shall be forwarded to the clerk of the court in which the offender was tried and to the board of claims for the purpose of the implementation of § 29-13-117.

(d) Moneys retained in the criminal injuries compensation fund shall be invested by the treasurer of the state of Tennessee under appropriate rules and regulations to the end that adequate funds will be available for purposes of this section and §§ 29-13-101 — 29-13-117. [Acts 1976 (Adj. S.), ch. 736, § 16(a)-(d); 1977, ch. 427, § 3; 1978 (Adj. S.), ch. 839, § 4; 1979, ch. 331, § 1; impl. am. Acts 1979, ch. 359, §§ 5, 26; 1980 (Adj. S.), ch. 893, § 1; 1981, ch. 163, §§ 1-3; T.C.A., § 40-3207.]

* * *

39-3-405. Treatment upon conviction of burglary or safecracking. — (a) Any person who is convicted of a violation of §§ 39-3-401, 39-3-402, 39-3-403 or 39-3-404 for the first time shall not be granted parole nor shall his sentence be suspended and he be placed on probation unless such person either makes or agrees in writing to make full restitution to the victim of such crime for the amount of money or the value of any property lost as the result of such offense. The court or board of paroles shall revoke the probation or parole of any person who fails to make full restitution as required by this section. If such restitution is to be made in installments pursuant to a written agreement, failure to pay any three (3) consecutive installments or failure to pay fewer than five (5) installments during any one (1) year shall constitute failure to make restitution for the purpose of revoking such probation or parole. Pro-

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vided, however, that the court or board of paroles shall, as part of its decision to revoke probation or parole, make a written finding that the probationer or parolee has willfully or intentionally failed to make restitution.

* * *

40-20-116. Order of restitution. — (a) Whenever a felon is convicted of stealing or feloniously taking or receiving property, or defrauding another thereof, the jury shall ascertain the value of such property, if not previously restored to the owner, and the court shall, thereupon, order the restitution of the property, and, in case this cannot be done, that the party aggrieved recover the value assessed against the prisoner, for which execution may issue as in other cases.

(b) If the property has been feloniously destroyed, the jury shall ascertain the damages sustained, upon which judgment shall be rendered in favor of the party aggrieved against the defendant, and execution shall issue as before provided.

(c) The provisions of this section are cumulative, and do not deprive the party injured of any other right he may have for the recovery of his property or its value. [Code 1858, §§ 5233-5235 (deriv. Acts 1829, ch. 23, § 79); Shan., §§ 7208-7210; Code 1932, §§ 11795-11797; T.C.A. (orig. ed.), §§ 40-2716 — 40-2718.]

40-35-304. Restitution as condition of probation — Petition to modify. — (a) A sentencing court may direct a defendant to make restitution to the victim of the offense as a condition of probation.

(b) Whenever the court believes that restitution may be proper or the victim of the offense or the district attorney general requests, the court shall order the pre-sentence service officer to include in the pre-sentence report documentation regarding the nature and amount of the victim's pecuniary loss.

(c) The court shall specify at the time of the sentencing hearing the amount and time of payment or other restitution to the victim and may permit payment or performance in installments. The court may not establish a payment or performance schedule extending beyond the statutory maximum term of probation supervision that could have been imposed for the offense.

(d) In determining the amount and method of payment or other restitution, the court shall consider the financial resources and future ability of the defendant to pay or perform.

(e) For purposes of this section "pecuniary loss" means:

(1) All special damages, but not general damages, as substantiated by evidence in the record or as agreed to by the defendant; and

(2) Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the offense. Provided, however, that payment of special prosecutors shall not be considered an out-of-pocket expense.

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(f) A defendant, victim or district attorney general at any time may petition the sentencing court to adjust or otherwise waive payment or performance of any ordered restitution or any unpaid or unperformed portion thereof. The court shall schedule a hearing and give the victim and the defendant notice of the hearing, date, place, and time and inform the victim and defendant that he will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition or amount and method of payment or other restitution ordered no longer exist or that it otherwise would be unjust to require payment or other restitution as imposed, the court may adjust or waive payment of the unpaid portion thereof or other restitution or modify the time or method of making restitution. The court may extend the restitution schedule, but not beyond the statutory maximum term of probation supervision that could have been imposed for the offense. [Acts 1982 (Adj. S.), ch. 868, § 1; T.C.A., § 40-43-304.]

CHAPTER 6

RESTITUTION

SECTION.	SECTION.
PART 1—RESTITUTION CENTERS ACT OF 1976	41-6-202. Definitions.
41-6-101. Short title.	41-6-203. Scope of projects — Contracts with private enterprise — Inmate participation.
41-6-102. Establishment authorized — Prerequisites to admission.	41-6-204. Wages.
41-6-103. Work outside center.	41-6-205. Receipt by inmates — Rules and regulations — Unemployment compensation.
41-6-104. Domicile of inmates.	41-6-206. Deductions.
41-6-105. Inmate earnings — Board charges.	41-6-207. Leasing land and facilities to private enterprise.
41-6-106. Disbursement of earnings.	
41-6-107. Approval of procedures for handling earnings.	
41-6-108. Failure to return.	
41-6-109. Screening inmates.	

PART 2—RESTITUTION INDUSTRIES

41-6-201. Purpose.

PART 1—RESTITUTION CENTERS ACT OF 1976

41-6-101. Short title. — This part shall be known and may be cited as the "Restitution Centers Act of 1976." [Acts 1976 (Adj. S.), ch. 818, § 1; T.C.A., § 41-2301.]

41-6-102. Establishment authorized — Prerequisites to admission. — (a) The commissioner of correction is authorized to establish residential restitution centers for the purpose of allowing persons convicted of felony offenses and sentenced to the state department of correction to reimburse the victim for the value of property stolen, or for damages caused by such offenses.

(b) The commissioner may promulgate rules and regulations necessary to administer the programs, subject to the provisions of title 4, chapter 5.

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(c) A restitution center may be established inside or outside the bounds of the prison, provided however, the program shall be carried out using present facilities and administrative staff.

(d) Before inmates are accepted in the program, they must enter into an agreement to abide by the rules, regulations, and special conditions as set forth by the commissioner of correction or his designees. Provided further, that said inmate has been convicted of a felony where the maximum punishment actually imposed for said felony is not greater than five (5) years. [Acts 1976 (Adj. S.), ch. 818, § 2; T.C.A., § 41-2302.]

Collateral References. Power of court to order restitution to wronged client in disciplinary proceeding against attorney. 75 A.L.R.3d 307.

41-6-103. Work outside center. — The commissioner of correction may permit certain inmates to leave a residential restitution center during necessary and reasonable hours to engage in approved employment or practice legitimate self employed occupations, provided such places of employment are located in the state, and within daily commuting distance of the center. [Acts 1976 (Adj. S.), ch. 818, § 3; T.C.A., § 41-2303.]

41-6-104. Domicile of inmates. — Inmates assigned to restitution centers may be domiciled in correction detention facilities in any area of the state. [Acts 1976 (Adj. S.), ch. 818, § 4; T.C.A., § 41-2304.]

41-6-105. Inmate earnings — Board charges. — When inmates are so employed, the department shall require that inmates turn over wages and salaries when received and such money shall be deposited in trust accounts and ledgers shall be maintained reflecting the status of individual accounts. Each inmate shall be liable for reasonable charges for board as fixed by the commissioner of correction. [Acts 1976 (Adj. S.), ch. 818, § 5; T.C.A., § 41-2305.]

41-6-106. Disbursement of earnings. — After initial payment of board, the wages and salaries of inmates shall be disbursed for the following purposes in the order set forth:

(1) Reimbursement to the victims of the offense in amounts and in the manner set forth in the contract executed between the inmate, the victim, and the commissioner of correction;

(2) Necessary travel expenses to and from work;

(3) Support of dependents, if any, in amounts fixed by the department of correction;

(4) Payment of any outstanding court costs assessed against the inmate;

(5) Payment in full or ratably of obligations acknowledged in writing by inmates; and

(6) The balance, if any, to inmates upon discharge from confinement. [Acts 1976 (Adj. S.); ch. 818, § 6; T.C.A., § 41-2306.]

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41-6-107. Approval of procedures for handling earnings. — Procedure for the handling of all funds as set forth in this chapter shall be subject to review and approval by the comptroller and the commissioner of finance and administration. The funds received by the state shall constitute departmental revenues. [Acts 1976 (Adj. S.), ch. 818, § 7; T.C.A., § 41-2307.]

41-6-108. Failure to return. — In the event inmates participating in restitution employment programs fail to return to the restitution centers within specified time limits, such failure shall constitute prima facie evidence of escape and shall be punished under the penalties imposed by the laws of the state of Tennessee. [Acts 1976 (Adj. S.), ch. 818, § 8; T.C.A., § 41-2308.]

Collateral References. Escape from public employee or institution other than correctional or law enforcement employee or institution as criminal offense. 69 A.L.R.3d 625.
Failure of prisoner to return at expiration of work furlough or other permissive release period as crime of escape. 76 A.L.R.3d 658.
Temporary unauthorized absence of prisoner as escape or attempted escape. 76 A.L.R.3d 695.

41-6-109. Screening inmates. — Participating inmates shall be carefully screened and the committing courts shall be consulted before an inmate is placed in the restitution program. [Acts 1976 (Adj. S.), ch. 818, § 9; T.C.A., § 41-2309.]

PART 2—RESTITUTION INDUSTRIES

41-6-201. Purpose. — It is the purpose of this part:

(1) to authorize the commissioner of the department of correction to establish demonstration-type projects involving inmate labor and private industry to be known as Tennessee restitution industries;

(2) to authorize the commissioner to contract with private industry to lease state land, improvements and facilities at adult correction institutions for the establishment of such industries;

(3) to provide for the employment of the inmates of such institution by such private industries and the term of such employment; and

(4) to designate the uses to be made of deductions from wages earned by such inmate employees. [Acts 1977, ch. 151, § 1; T.C.A., § 41-2401.]

* * *

CHAPTER 4

COMPENSATION OF WITNESSES

SECTION.		SECTION.	
24-4-101.	Basic per diem and mileage.	24-4-105.	Settlement of case.
24-4-102.	Witness residing outside county.	24-4-106.	Probate of attendance — Immediate payment — Travel advances in criminal cases.
24-4-103.	Witness before general sessions judge.	24-4-107.	Recovery from successful party.
24-4-104.	Maximum number of appearances compensated.		

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24-4-101. Basic per diem and mileage. — Witnesses in courts of record shall receive a compensation of one dollar (\$1.00) per day for each day's necessary attendance; and when they reside at a greater distance than ten (10) miles, four cents (4¢) per mile for going to and returning from court, and tolls and ferriages as allowed by law; but mileage, tolls, and ferriages shall be allowed only for one trip going and returning during the term of any court, unless the witness is discharged by the parties, to return, and does return, upon a given day. [Acts 1859-1860, ch. 22; Shan., § 5617; Code 1932, § 9799; T.C.A. (orig. ed.), § 24-401.]

24-4-102. Witness residing outside county. — (a) All witnesses attending, under summons, any court of record in any county in this state other than the county in which said witness or witnesses live shall be entitled to receive the sum of forty dollars (\$40.00) per day for such attendance. In addition thereto, the witness shall also receive reimbursement at a rate allowable under the state of Tennessee Comprehensive Travel Regulations in effect at the time such travel expense is incurred for each mile traveled in going to and returning from such court.

(b) In addition to the mileage reimbursement allowed, a witness shall be allowed the per diem allowance designated herein for each day required to travel in going to and returning from a trial. Mileage reimbursement to a witness traveling from out of state shall be the same as that allowed a state employee using a personal vehicle for the convenience of the state. [Acts 1867-1868, ch. 11, § 2; Shan., § 5618; Code 1932, § 9800; Acts 1971, ch. 251, § 1; 1979, ch. 392, §§ 1, 5; T.C.A. (orig. ed.), § 24-402.]

Cross-References. Liability of state or county in criminal cases, § 40-3331.

Section to Section References. This section is referred to in §§ 17-5-314, 24-4-106, 40-3331.

Textbooks. Gibson's Suits in Chancery (5th ed., Crownover), § 497.

Law Reviews. Claims Against the State in Tennessee — The Court of Claims, 4 Vand. L. Rev. 875.

NOTES TO DECISIONS

1. Effect of Payment.

Payment of amount provided by law to witness in criminal prosecution was entirely proper and would not discredit his testimony in

any way. *Freshwater v. State*, 2 Tenn. Cr. App. 314, 453 S.W.2d 446 (1969), cert. denied, 400 U.S. 840; 91 S. Ct. 80, 27 L. Ed. 2d 74 (1970).

Collateral References. Witnesses ⇨ 27.

24-4-103. Witness before general sessions judge. — Every witness summoned before a judge of the court of general sessions is entitled to fifty cents (50¢) for each day's attendance; and when summoned to attend in another county from that of his own, shall be entitled to five cents (5¢) per mile for every mile in going to and returning from said county, and all necessary tolls and ferriage. [Code 1858, § 3831 (deriv. Acts 1843-1844, ch. 112, § 2); Acts 1867-1868, ch. 11, § 1; integrated in Shan., § 5619; Code 1932, § 9801; impl. am. Acts 1979, ch. 68, § 3; T.C.A. (orig. ed.), § 24-403.]

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40-17-112. Fees for state witnesses. — All witnesses entitled to compensation under §§ 40-25-106 and 40-25-129 appearing for the state under subpoena, either before a magistrate or the grand jury, or on an indictment found, are to have the same compensation for their attendance as in civil cases, unless otherwise provided. [Code 1858, § 5391 (deriv. Acts 1855-1856, ch. 63, § 2); Shan., § 7366; mod. Code 1932, § 11973; T.C.A. (orig. ed.), § 40-2421.]

40-25-106. Witnesses living near court. — Neither the state of Tennessee nor any county thereof shall pay or be liable in any criminal case or prosecution for the fees, costs, or mileage which may accrue in favor of any witness who shall, at the time of his attendance as such witness before any court, grand jury, or magistrate, reside within five (5) miles of the place where he attends as such witness. [Acts 1897, ch. 20, § 2; Shan., § 7622a2; Code 1932, § 12251; T.C.A. (orig. ed.), § 40-3306.]

40-25-129. Cases in which state or county liable. — Neither the state of Tennessee nor any county thereof shall pay or be liable in any criminal prosecution for any costs or fees hereafter accruing, except in the following classes of cases:

(1) All felony cases, where prosecution has proceeded to a verdict in the circuit or criminal court.

(2) All cases where the defendant has been convicted in a court of record and the court has made a finding at any evidentiary hearing that the defendant is indigent and remains indigent at the time of conviction or where the execution issued upon the judgment against the defendant has been returned nulla bona; provided, that neither the state of Tennessee nor any county thereof shall be liable for, or pay any costs in any criminal case, where security has been accepted by the officer taking the security, and an execution, afterwards returned nulla bona, as to the defendant and his securities; provided, that compensation for boarding prisoners (§§ 8-26-105, 40-25-118 — 40-25-121, and 41-4-131 — 41-4-137), expenses of keeping and boarding juries (§§ 40-25-115 — 40-25-121), compensation of jurors (§§ 22-4-101 — 22-4-107 and 40-18-107), costs of transcripts in cases taken to the Supreme Court by appeal or writ of error (§ 8-21-401 (a)(5)), mileage and legal fees for removing or conveying criminals and prisoners from one county to another, or from one jail to another (§ 8-21-901 (a)(14) and (23), (b)(14) and (23)), and compensation and mileage of witnesses for the state duly subpoenaed and required to attend before any court, grand jury, or magistrate in a county other than that of their residence and more than five (5) miles from such residence (§§ 24-4-102 and 40-17-112), and where any witness for the state shall be confined in jail to await the trial in which he is to testify, shall be paid in all cases as heretofore.

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39-5-115. Bribery of witness — Penalties — Contempt power preserved. — (a) It is unlawful for any person to bribe, offer, promise or give, or to attempt to bribe, offer, promise or give, any gift, gratuity, or thing of value to any other person, or to threaten or otherwise coerce any person:

(1) Who is or is about to be a witness, upon a trial, hearing or other proceeding before any court or grand jury, with intent to influence such witness to be absent from such trial, hearing or other proceeding; or

(2) Who is a witness or has knowledge of any matter being investigated by state, county or municipal law enforcement officials, with the intent of preventing or encouraging such persons from giving information to such law enforcement officials.

(b) Any person who violates any provision of this section shall be:

(1) Guilty of a misdemeanor if the proceeding was a civil proceeding;

(2) Guilty of a misdemeanor if the prosecution or investigation was of an offense punishable as a misdemeanor; or

(3) Guilty of a felony if the prosecution or investigation involved a felony and upon conviction shall be imprisoned for not more than five (5) years.

(c) Nothing in this section shall be deemed to nullify or repeal any contempt power of any judge of any court in this state. [Acts 1967, ch. 93, §§ 1-3; 1970 (Adj. S.), ch. 438, § 1; T.C.A., § 39-835.]

* * *

40-35-207. Pre-sentence report — Contents. — (a) The pre-sentence report shall set forth:

(1) The characteristics and circumstances of the offense committed by the defendant;

(2) The defendant's physical and mental history and condition, family and social situation and background, education, occupation and personal habits;

(3) Information relating to enhancement or mitigating factors asserted by the parties, and its source;

(4) The defendant's record of prior convictions;

(5) Information relating to any enhancement or mitigating factor which may affect the sentence imposed although not asserted by the parties and the source from which the information was obtained;

(6) If a sentence not involving confinement is likely or is sought by an eligible defendant, information to assist the court in deciding whether to grant probation and in imposing conditions for any probation supervision that may be ordered including the nature and extent of programs and resources available to assist in rehabilitation of the defendant;

(7) If requested by the court, information to assist the court in imposing a fine or restitution including the financial resources of the defendant, the financial needs of the defendant's dependents, and the gain derived from or loss caused by the criminal activity;

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(8) Any statement relating to sentencing submitted by the victim of the offense or the investigative agency; and

(9) Any other matters the court directs to be included.

(b) In misdemeanor cases where the court has ordered a pre-sentence report or hearing and in cases in which neither party asserts the existence of any enhancement or mitigating factor, the court may direct the pre-sentence service officer not to include certain types of information normally required in the report. [Acts 1982 (Adj. S.), ch. 868, § 1; T.C.A., § 40-43-207.]

* * *

40-17-118. Confiscated stolen property. — (a) Personal property confiscated as stolen property by a lawful officer of the state, a county or a municipality of the state to be held as evidence of a crime shall be promptly appraised, catalogued and photographed by the law enforcement agency retaining custody of the property.

(b) The lawful officer, of the state, county or municipality, in order to detain the property from the lawful owner, for whatever reason, more than thirty (30) days, shall show cause to the judge having jurisdiction over the property by petition filed by the district attorney general upon five (5) days' notice to the property owner why the property should be further detained. The court may grant or refuse the requested impounding order upon such terms and conditions as are adjudged to be proper.

(c) The state, county and/or municipal authority holding the property shall be responsible for the return of the property to the lawful owner and shall be liable in damages to the owner of the property in the event of damage or destruction occasioned by the delay in the return of the property. [Acts 1973, ch. 317, §§ 1-3; T.C.A., §§ 40-2442 — 40-2444.]

* * *

39-2-104. Assault with intent to rob. — (a) Whoever shall assault another, with intent feloniously and willfully to commit a robbery, shall, on conviction, be imprisoned in the penitentiary not less than three (3) years nor more than fifteen (15) years. If the assault is committed by means of a deadly weapon, whether injury results to the person assaulted or not, the penalty on conviction shall be imprisonment in the penitentiary for not less than five (5) years nor more than twenty-one (21) years.

(b) Provided however, that if the person assaulted is included within any one (1) or more of the categories listed below, the jury may fix the length of imprisonment, upon conviction, at not less than the minimum nor more than double the maximum length of time provided by this section:

(1) Sixty-five (65) years of age or older;

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CHAPTER 12
ADULT ABUSE

SECTION.		SECTION.	
36-1201.	Definitions.	36-1211.	Copies of protection order to be issued.
36-1202.	Duration of court's jurisdiction.	36-1212.	Penalty for violation of order or consent agreement — Civil contempt.
36-1203.	Petition for relief — Application only to spouses.	36-1213.	Arrest for violation of protection order — Arrest without warrant.
36-1204.	Forms.	36-1214.	Arrestee to answer charge of contempt — Hearing — Bond — Notification to protected party to show cause for contempt order.
36-1205.	Protection order — Extension — Hearing — Costs and attorney's fees.	36-1215.	Leaving residence, necessary force not to affect right of relief.
36-1206.	Scope of protection order.		
36-1207.	Statement of penalty for violation included in protection order.		
36-1208.	Protection order not to affect title to real property.		
36-1209.	Execution of bond not required.		
36-1210.	Duration of protection order — Modification.		

36-1201. Definitions. — For the purpose of this chapter, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

- (1) "Abuse" means afflicting or attempting to inflict physical injury on an adult by other than accidental means, physical restraint, or malicious damage to the personal property of the abused party;
- (2) "Adult" means any person eighteen (18) years of age or older, or who is otherwise emancipated;
- (3) "Court" means any court of record with jurisdiction over domestic relation matters;
- (4) "Family or household member" means spouses, persons living as spouses, persons related by blood or marriage, and other persons jointly residing in the same dwelling unit, who are eighteen (18) years of age or older, or who are emancipated;
- (5) "Petitioner" means person alleging abuse in petition for order for protection;
- (6) "Respondent" means person alleged to have abused another in a petition for order for protection. [Acts 1979, ch. 350, § 1.]

Cross-References. Assault upon spouse, misdemeanor, § 39-2-105. Section to Section References. This chapter is referred to in § 36-1204.

36-1202. Duration of court's jurisdiction. — The jurisdiction of any court pursuant to this chapter shall remain in effect until such time as a complaint for divorce is filed and the forum court orders the dissolution or modification of any order of protection. [Acts 1979, ch. 350, § 2.]

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36-1203. Petition for relief — Application only to spouses. — Any and all who have been subjected to or threatened with abuse by a present adult family or household member may seek relief under this chapter by filing a sworn petition alleging such abuse by the respondent.

It is declared to be the legislative intent of this chapter that it shall apply only to husbands and wives who have been and are at the time of the seeking of the relief, legally married. [Acts 1979, ch. 350, §§ 3, 16.]

36-1204. Forms. — (a) The office of the clerk of court shall provide forms which may be necessary to seek a protection order under this chapter. These forms shall be limited to use in causes filed under this chapter and they shall be made available to all who request assistance in filing a petition. The petitioner is not limited to the use of these forms and may present to the court any legally sufficient petition in whatever form. The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition, by indicating where the petitioner's name shall be filled in, by reading through the petition form with the petitioner, and by rendering any other such assistance as is necessary for the filing of the petition. All such petitions which are filed pro se shall be liberally construed in favor of the petitioner.

(b) The office of the clerk shall make available the following blank forms and/or such other forms as may be ordered by the court:

(1)
IN THE _____ COURT OF _____ COUNTY, TENNESSEE
_____,)
PETITIONER,)
VS.) NO. _____
_____,)
RESPONDENT.)

PETITION FOR ORDERS OF PROTECTION

Petitioner, _____, pursuant to Tennessee Code Annotated, Section 36-1201 et seq., states:
1. Petitioner and respondent are residents of _____ County, Tennessee, and live at _____

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IT IS FURTHER ORDERED, that this Order shall remain in effect for a period of one hundred twenty (120) days, and petitioner, upon notice to respondent, may request a continuation of this Order.

ENTERED this _____ day of _____, 19____.

JUDGE

Certificate

I certify that a true and exact copy of this Order was served upon respondent in the following manner: _____

[Acts 1979, ch. 350, § 4; 1982 (Adj. S.), ch. 935, § 1.]

Amendments. The 1982 amendment substituted the present section for the former section which read:

"The court shall provide forms and clerical assistance to help with the writing and filing of a petition under this chapter by any person not represented by counsel. The court shall advise

the petitioner of the right to file a motion and affidavit to sue in forma pauperis and shall assist with the writing and filing of such motion and affidavit."

Effective Dates. Acts 1982 (Adj. S.), ch. 935, § 2. May 19, 1982.

36-1205. Protection order — Extension — Hearing — Costs and attorney's fees. — Upon the filing of a petition under this chapter, the courts may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the petitioner shall constitute good cause for purposes of this section. Within ten (10) days of service of such order on the respondent under this chapter, a hearing shall be held, at which time the court shall either dissolve any ex parte order which has been issued, or shall, if the petitioner has proved the allegation of abuse by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one hundred twenty (120) days unless a further hearing on the continuation of such order is requested by the respondent or the complainant in which case, on proper showing of cause, such order may be continued for a further definite period of one hundred twenty (120) days after which time a further hearing must be held for any subsequent one hundred twenty-day periods. Any ex parte order of protection shall be in effect until the time of the hearing. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegation of abuse by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent at least five (5) days prior to such hearing. Such notice shall advise the respondent that he may be represented by counsel. If the court, after the hearing, issues or extends an order of protection, petitioner's court costs and attorney's fees shall be assessed against the respondent. [Acts 1979, ch. 350, § 5.]

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36-1206. Scope of protection order. — Any order of protection granted under this chapter to protect the petitioner from abuse may include, but is not limited to:

(1) Directing the respondent to refrain from abusing or threatening to abuse the petitioner;

(2) Granting to the petitioner possession of the residence or household to the exclusion of the respondent by evicting the respondent, by restoring possession to the petitioner or by both;

(3) Directing the respondent to provide suitable alternate housing for the petitioner when the respondent is the sole owner or lessee of the residence or household;

(4) Awarding temporary custody of, or establishing temporary visitation rights with regard to any minor children born to or adopted by the parties; or

(5) Awarding financial support to the petitioner and such persons as the respondent has a duty to support.

Relief granted pursuant to subdivisions (2)-(5) of this section shall be ordered only after the petitioner and respondent have been given an opportunity to be heard by the court. [Acts 1979, ch. 350, § 6.]

36-1207. Statement of penalty for violation included in protection order. — Any order of protection issued under this chapter shall include the statement of the maximum penalty which may be imposed pursuant to § 36-1212 for violating such order. [Acts 1979, ch. 350, § 7.]

36-1208. Protection order not to affect title to real property. — No order of protection made under this chapter shall in any manner affect title to any real property. [Acts 1979, ch. 350, § 8.]

36-1209. Execution of bond not required. — The court shall not require the execution of a bond by the petitioner to issue any order of protection under this chapter. [Acts 1979, ch. 350, § 9.]

36-1210. Duration of protection order — Modification. — All orders of protection shall be effective for a fixed period of time, not to exceed one (1) year. The court may modify its order at any time upon subsequent motion filed by either party together with an affidavit showing a change in circumstances sufficient to warrant the modification. [Acts 1979, ch. 350, § 10.]

36-1211. Copies of protection order to be issued. — A copy of any order of protection granted under this chapter shall be issued to the petitioner, the respondent, and the local law-enforcement agencies having jurisdiction in the area where the petitioner resides. [Acts 1979, ch. 350, § 11.]

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36-1212. Penalty for violation of order or consent agreement — Civil contempt. — Upon violation of the order of protection or a court-approved consent agreement, the court may hold the defendant in civil contempt and punish him in accordance with the law. [Acts 1979, ch. 350, § 12.]

Section to Section References. This section is referred to in § 36-1207.

36-1213. Arrest for violation of protection order — Arrest without warrant. — (a) An arrest for violation of an order of protection issued pursuant to this chapter may be with or without warrant. Any law-enforcement officer may arrest the respondent without a warrant if:

(1) The officer has proper jurisdiction over the area in which the moving party resides;

(2) The officer has reasonable cause to believe the respondent has violated or is in violation of an order for protection; and

(3) The officer has verified whether an order of protection is in effect against the respondent. If necessary, the police officer may verify the existence of an order for protection by telephone or radio communication with the appropriate law enforcement department.

(b) No ex parte order of protection can be enforced by arrest under this section until the respondent has been served with the order of protection or otherwise has acquired actual knowledge thereof. [Acts 1979, ch. 350, § 13.]

Section to Section References. This section is referred to in § 36-1204.

36-1214. Arrestee to answer charge of contempt — Hearing — Bond — Notification to protected party to show cause for contempt order. — A person arrested pursuant to this chapter shall be brought before the court having jurisdiction in the cause within twenty-four (24) hours to answer a charge of contempt for violation of the order of protection, and the court shall:

(1) Set a time certain for a hearing on the alleged violation of the order of protection within seventy-two (72) hours after arrest, unless extended by the court on the motion of the arrested person;

(2) Set a reasonable bond pending the hearing on the alleged violation of the order of protection; and

(3) Notify the person who has procured the order of protection and direct the party to show cause why a contempt order should issue. [Acts 1979, ch. 350, § 14.]

36-1215. Leaving residence, necessary force not to affect right of relief. — (a) The petitioner's right to relief under this chapter shall not be affected by petitioner's leaving the residence or household to avoid abuse.

(b) The petitioner's right to relief under this chapter shall not be affected by use of such physical force against the respondent as is reasonably believed to be necessary to defend the petitioner or another from imminent physical injury or abuse. [Acts 1979, ch. 350, § 15.]

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39-2-105. Assault upon spouse. — If any person commits an assault and battery on his or her spouse, for any cause whatsoever, he or she is guilty of a misdemeanor, and punishable accordingly. [Code 1858, § 4629 (deriv. Acts 1849-1850, ch. 109, § 1); Shan., § 6470; Code 1932, § 10800; Acts 1976 (Adj. S.), ch. 565, § 1; T.C.A. (orig. ed.), § 39-602.]

Category	Citation
1. Victim Compensation Program	Civ. Stat. art. 8309-1, §§1 et seq.
1.1 Responsible Agency	Civ. Stat. art. 8309-1, §3(1)
1.2 Eligible Claimants	Civ. Stat. art. 8309-1, §3(9)
1.3 Losses Covered	Civ. Stat. art. 8309-1, §3(7)
1.4 Minimum and Maximum Award	Civ. Stat. art. 8309-1, §7(b)
1.5 Required to Show Financial Need	Civ. Stat. art. 8309-1, §6(c)(3)
1.6 Required to Report Crime - Time Limit	Civ. Stat. art. 8309-1, §4(b)
1.7 Filing of Claim - Time Limit	Civ. Stat. art. 8309-1, §4(c)
1.8 Emergency Award	Civ. Stat. art. 8309-1, §8
1.9 Funding	Civ. Stat. art. 8309-1, §14; Code of Crim. Proc. art. 42.12, §6c
2. Restitution	
2.1 Sentencing Option	Code of Crim. Proc. art. 42.12, §10A(e)(2) (community service restitution probation)
2.2 Mandatory Condition of Probation	Code of Crim. Proc. art. 42.12, §§6(a)(h), 6(a)(n), art. 42.13, §§6a(8),(14),6d
2.3 Mandatory Condition of Parole	Code of Crim. Proc. art. 42.12, §15(g)
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	Code of Crim. Proc. art. 42.12, §§6(b), 6c, 6c(g)(4), 10A(e)(2) (restitution centers program); Civ. Stat. art. 6166x-3, §6(3) (work furlough program)
3. Escrow and Forfeiture of Offender Profits	Civ. Stat. art. 8309-1, §16 et seq.
4. Witness Fees	Code of Crim. Proc. art. 24.16
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	Penal Code §§36.05, 36.06
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	Civ. Stat. art. 8309-1, §10(e),(f)
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	Code of Crim. Proc. art. 47.01 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	Penal Code §22.04
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	Human Res. Code §§48.001, 48.036, 48.056
12.4 Abuse, Neglect, Exploitation - Protective Services	Human Res. Code §48.056 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	Civ. Stat. art. 4447m
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	Code of Crim. Proc. art. 38.071
14. Domestic Violence	
14.1 Protective Orders	Fam. Code §§71.01 et seq.
14.2 Domestic Violence Shelters	Human Res. Code §§51.001 et seq.
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	Human Res. Code §51.006 (data on domestic abuse centers)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	Human Res. Code §§48.083 (elderly abuse records), 51.007 (domestic abuse data)
15.4 Sexual Assault Counselor Privilege	

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Texas Codes Annotated (Vernon's)

Texas Civil Statutes

PART 5

Art. 8309-1. Crime Victims Compensation Act

Short title

Section 1. This Act may be cited as the Crime Victims Compensation Act.

Declaration of purpose

Sec. 2. The legislature recognizes that many innocent persons suffer personal injury or death as a result of criminal acts. Crime victims and persons who intervene in crimes on behalf of peace officers may suffer disabilities, incur financial burdens, or become dependent on public assistance. The legislature finds and determines that there is a need for indemnification of victims of crime and citizens who suffer personal injury or death in the prevention of crime or the apprehension of criminals.

Definitions

Sec. 3. In this Act:

- (1) "Board" means the Industrial Accident Board.
- (2) "Claimant" means a victim or an authorized person acting on behalf of any victim.
- (3) "Collateral source" means a source of benefits or advantages for pecuniary loss awardable other than under this Act which the victim has received, or which is readily available to him or her from:
 - (A) the offender under an order of restitution to the claimant imposed by a court as a condition of probation;
 - (B) the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them in excess of or secondary to benefits under this Act;
 - (C) Social Security, Medicare and Medicaid;
 - (D) state-required temporary nonoccupational disability insurance;
 - (E) workers' compensation;
 - (F) wage continuation programs of any employer;
 - (G) proceeds of a contract of insurance payable to the victim for loss which he or she 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" means conduct that:
 - (A) occurs or is attempted in this state;
 - (B) poses a substantial threat of personal injury or death;
 - (C) 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; and
 - (D) is not conduct arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water vehicle except when intended to cause personal injury or death in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701f-1 or 6701f-2, Revised Civil Statutes of Texas, 1925, as amended.

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(5) "Dependent" means:

(A) a surviving spouse;

(B) a person who is a dependent of a deceased victim or intervenor within the meaning of Section 152, Internal Revenue Code of 1954, as amended (26 U.S.C. Section 152); or

(C) a posthumous child of the deceased intervenor or victim.

(6) "Financial stress" means financial hardship experienced by a claimant as a result of pecuniary loss from criminally injurious conduct giving rise to a claim under this Act. A claimant suffers financial stress only if he or she cannot maintain his or her customary level of health, safety, and education for himself or herself and his or her dependents without undue financial hardship. In making its finding, the board shall consider all relevant factors, including:

(A) the number of the claimant's dependents;

(B) the usual living expenses of the claimant and his or her family;

(C) the special needs of the claimant and his or her dependents;

(D) the claimant's income and potential earning capacity; and

(E) the claimant's resources.

(7) "Pecuniary loss" means the amount of expense reasonably and necessarily incurred:

(A) regarding personal injury for:

(i) medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;

(ii) actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury at a rate not to exceed \$150 per week; and

(iii) care of minor children enabling a victim or his or her spouse, but not both of them, to continue gainful employment at a rate not to exceed \$30 per child per week up to a maximum of \$75 per week for any number of children; and

(B) as a consequence of death for:

(i) funeral and burial expenses;

(ii) loss of support to a dependent or dependents not otherwise compensated for as a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate of not more than a total of \$150 per week for all dependents; and

(iii) care of minor children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury, at a rate not to exceed \$30 per week per child, up to a maximum of \$75 per week for any number of children.

(C) Pecuniary loss does not include loss attributable to pain and suffering.

(8) "Intervenor" means a person who goes to the aid of another and is killed or injured in the good faith effort to prevent criminally injurious conduct, to apprehend a person reasonably suspected of having engaged in such conduct, or to aid a police officer. Intervenor does not include a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of his or her employment.

(9) "Victim" means:

(A) a person who is a Texas resident at the time of the crime and who suffers personal injury or death as a result of criminally injurious conduct;

(B) an intervenor;

(C) a dependent of a deceased victim; and

(D) in the event of a death, a person who legally assumes the obligation or who voluntarily pays the medical or burial expenses incurred as a direct result of the crime.

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(10) "Crime of violence" means any offense defined in the Penal Code that results in personal injury to a resident of this state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime of violence for the purposes of this Act, except that a crime of violence includes injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle, or injury or death sustained in an accident caused by a driver in violation of Section 38, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or Article 6701f-1 or 6701f-2, Revised Civil Statutes of Texas, 1925, as amended.

Application

Sec. 4. (a) An applicant shall apply in writing in a form that conforms substantially to that prescribed by the board.

(b) No claimant may file an application unless the victim reports the crime to the appropriate state or local public safety or law enforcement agency within 72 hours after the crime is committed or within a longer period that is justified by extraordinary circumstances as determined by the board.

(c) A claimant must file an application not later than one year after the date of the crime, except that the board may extend the time for filing for good cause shown by the claimant.

(d) The application shall be verified and shall contain the following:

(1) a description of the date, nature, and circumstances of the criminally injurious conduct;

(2) a complete financial statement, including the cost of medical care or burial expenses and the loss of wages or support the claimant has incurred or will incur and the extent to which the claimant has been indemnified for these expenses from any collateral source;

(3) when appropriate, a statement indicating the extent of any disability resulting from the injury incurred;

(4) an authorization permitting the attorney general to verify the contents of the application; and

(5) other information as the board may require.

Review, verification, hearing

Sec. 5. (a) The board shall appoint a clerk to review all applications for assistance made by claimants under Section 4 of this Act in order to ensure that they are complete. If an application is not complete, the clerk shall return it to the claimant with a brief statement of the additional information required. Within 30 days after receiving the returned application, the claimant may either supply the additional information or appeal the action to the board, which shall review the application to determine whether or not it is complete.

(b) Immediately on receipt of the application, the board shall send a copy of the application and all pertinent documents to the attorney general. The attorney general may investigate the application, appear in hearings on the application, and present evidence supporting or opposing approval of the application.

(c) The board shall appoint one of its members to determine whether a hearing is necessary. If the member determines that a hearing is not necessary, he or she may approve the application in accordance with the provisions of Section 6 of this Act. If the member determines that a hearing is necessary or if the attorney general or the claimant requests a hearing, the board shall then consider the application at a hearing at a time and place of its choosing. The board shall notify all interested persons, including the attorney general, not less than 10 days prior to the date of the hearing.

(d) At the hearing the board shall:

(1) review the application for assistance and the report prepared by the attorney general and any other evidence obtained as a result of his or her investigation; and

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(2) receive other evidence that the board finds necessary or desirable to evaluate the application properly.

(e) Incident to its review, verification, and hearing duties under this Act, the board shall have the following powers:

(1) to request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether and the extent to which a claimant qualifies for an award;

(2) the powers given to the board under Section 4, Article 8307, Revised Civil Statutes of Texas, 1925, as amended (Article 8307, Vernon's Texas Civil Statutes), except as modified by this Act; and

(3) if the mental, physical, or emotional condition of a victim is material to a claim, to order the victim to submit to a mental or physical examination by a physician or psychologist and to 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 that person to file with the board a detailed written report of the examination or autopsy. The report shall set out his or her findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. The physician or psychologist shall be compensated from funds appropriated for the administration of this Act.

(f) On request of the person examined, the board shall furnish him or her a copy of the report. If the victim is deceased, the board on request shall furnish the claimant a copy of the report.

Approval or rejection of claim

Sec. 6. (a) The board shall award compensation for pecuniary loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements set forth in this Act have been met.

(b) The board shall establish that as a direct result of criminally injurious conduct the victim suffered physical injury or death that resulted in a pecuniary loss which the victim is unable to recoup without suffering financial stress and for which he or she is not compensated from any collateral source.

(c) The board shall deny the application if:

(1) the criminally injurious conduct is not reported or the application is not made in the manner specified in Section 4 of this Act;

(2) the victim or person whose injury or death gives rise to the application knowingly and willingly participated in the criminally injurious conduct;

(3) the claimant will not suffer financial stress as a result of the pecuniary loss arising out of criminally injurious conduct; or

(4) the victim resided in the same household as the offender or his or her accomplice.

(d) The board may deny or reduce an award otherwise payable:

(1) if the victim has not substantially cooperated with appropriate law enforcement agencies;

(2) if the behavior of the victim at the time of the act or omission giving rise to the claim was such that he or she bears a share of the responsibility for the act or omission; or

(3) to the extent that pecuniary loss is recouped from other persons, including collateral sources.

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Types of assistance; awards

Sec. 7. (a) If an application for compensation is approved under Section 6 of this Act, the board shall determine what type of state assistance will best aid the claimant. The board may take any or all of the following actions:

(1) authorize cash payment or payments to or on behalf of the claimant for pecuniary loss as defined in Subdivision (7), Section 3 of this Act;

(2) refer the claimant to a state agency for vocational or other rehabilitative services; and

(3) provide counseling services for victims or contract with private entities to provide these services.

(b) Awards payable to a victim and all other claimants sustaining pecuniary loss because of injury or death of that victim may not exceed \$25,000 in the aggregate.

(c) 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 pecuniary 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 (d) of this section, the part of an award that may not be paid in a lump sum shall be paid in installments.

(d) At the instance of the claimant, the board may compute future pecuniary loss to a lump sum but only upon a finding by the board that:

(1) the award in a lump sum will promote the interests of the claimant; or

(2) the present value of all future pecuniary loss does not exceed \$1,000.

(e) An award for future pecuniary loss payable in installments may be made only for a period as to which the board can reasonably determine future pecuniary loss.

(f) An award is not subject to execution, attachment, garnishment, or other process, except that an award is not exempt from a claim of a creditor to the extent that he or she provided products, services, or accommodations, the costs of which are included in the award.

(g) An assignment or agreement to assign a right to reparations for loss accruing in the future is unenforceable except:

(1) an assignment of a right to reparations for work loss to secure payment of alimony, maintenance, or child support; or

(2) an assignment of a right to reparations 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.

Emergency award

Sec. 8. If prior to taking action on an application it appears likely that a final award will be made and that the claimant will suffer undue hardship if immediate economic relief is not had, the board or board member may make an emergency award in an amount not to exceed \$1,500. The amount paid shall be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

Reconsideration; judicial review

Sec. 9. (a) 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.

(b) The right of reconsideration does not affect the finality of a board decision for the purpose of judicial review.

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(c) Within 20 days after the rendition of a final ruling and decision by the board, the claimant or the attorney general may file with the board notice of dissatisfaction with the final ruling and decision. The dissatisfied party shall within 20 days after giving the notice bring suit in the district court having jurisdiction in the county where the injury or death occurred or the county where the victim resided at the time the death or injury occurred, and the board shall provide for the suspension of payments to a claimant and may not reconsider an award during the pendency of an appeal of the ruling and decision on that claim. The court shall determine the issues in the cause by trial de novo, and the burden of proof is on the claimant. In computing the 20 days for filing a notice of dissatisfaction or the 20 days to bring suit, if the last day is a legal holiday or Sunday, the last day shall not be counted, and the time shall be extended to include the next business day.

Rules and regulations; notice of provisions of Act

Sec. 10. (a) The board shall promulgate and adopt rules consistent with this Act governing its administration, including rules relating to the method of filing claims and the proof of entitlement to compensation. Sections 1 through 12 of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), except Subdivision (3) of Subsection (a) and Subsection (b) of Section 4, apply to the board. Sections 13 through 20 of that Act do not apply to the board or its orders and decisions.

(b) The board may appoint hearing officers to conduct hearings or prehearing conferences under this Act when hearings or prehearing conferences are necessary to determine eligibility for compensation.

(c) When hearings or prehearing conferences are conducted, they shall be open to the public unless in a particular case the hearing officer or board determines that the hearing or prehearing conference or a part of it should be held in private because a criminal suspect has not been apprehended or because it is in the interest of the claimant.

(d) The board may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make an emergency award under Section 8 of this Act.

(e) Every hospital licensed under the laws of this state shall display prominently in its emergency room posters giving notification of the existence and general provisions of this Act. The board shall set standards for the location of the display and shall provide posters, application forms, and general information regarding this Act to each hospital and physician licensed to practice in the State of Texas.

(f) Every local law enforcement agency shall inform victims of criminally injurious conduct of the provisions of this Act and provide application forms to victims who desire to seek assistance. The board shall provide application forms and all other documents that local law enforcement agencies may require to comply with this section. The attorney general shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with him or her a description of the procedures adopted by each agency to comply.

Subrogation; notice of private action

Sec. 11. (a) If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits for pecuniary loss to the extent compensation is awarded from a source which is or if readily available to the claimant would be a collateral source.

(b) Before a claimant may bring an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant must give the board prior written notice of the proposed action. After receiving the notice, the board shall promptly:

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- (1) join in the action as a party plaintiff to recover reparations awarded;
- (2) require the claimant to bring the action in his or her individual name as a trustee in behalf of the state to recover reparations awarded; or
- (3) reserve its rights and do neither in the proposed action.

(c) If, as requested by the board under Subsection (b) of this section, the claimant brings the action as trustee and recovers compensation awarded by the board, he or she may deduct from the reparations recovered in behalf of the state the reasonable expenses of the suit, including attorney's fees, expended in pursuing the recovery for the state. The claimant shall justify this deduction in writing to the board on a form provided by the board.

Attorney's fees

Sec. 12. 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 compensation. It is unlawful for an attorney to contract for or receive any larger sum than the amount allowed. Attorney's fees may not be paid to an attorney of a claimant unless an award is made to the claimant.

Annual report

Sec. 13. The board shall prepare and transmit annually to the governor and the legislature a report of its activities, including a statistical summary of claims and awards made and denied. The report shall be based on the state fiscal year and shall be filed not more than 30 days after the end of each fiscal year.

Funds

Sec. 14. (a) The Compensation to Victims of Crime Fund is created in the State Treasury to be used by the board for the payment of compensation to claimants under this Act and other expenses in administering this Act. The Compensation to Victims of Crime Auxiliary Fund is created in the State Treasury to be used by the board only for the payment of compensation to claimants under this Act. The board shall make no compensation payments which exceed the amount of money in the combined funds. No general revenues may be used for payments under this Act.

(b) A person shall pay \$20 as a court cost, in addition to other court costs, on conviction of any felony, \$15 as a court cost, in addition to other court costs, on conviction of a misdemeanor punishable by imprisonment or by a fine of more than \$200, and \$12.50 as a court cost, in addition to other court costs, on conviction of a misdemeanor punishable by a fine of not more than \$200. A conviction that arises under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), or under the Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), is specifically excluded. The court shall require a person convicted of an offense listed under this section to pay the court cost whether or not the court grants the person a probated sentence. If a person is granted deferred adjudication under Article 42.12, 42.13, or 45.54, Code of Criminal Procedure, 1965, as amended, at the time the court grants deferred adjudication, the person shall pay as a court cost the amount that the person would have otherwise been required to pay under this subsection had the adjudication not been deferred and had the person been finally convicted of the offense.

(c) Court costs under this section are collected in the same manner as other fines or costs.

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(d) The officer collecting the costs in a municipal court case shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the municipal treasury. The officer collecting the costs in a justice, county, or district court case shall keep separate records of the funds collected as costs under this section and shall deposit the funds in the county treasury.

Text of subsec. (e) as amended by Acts 1983, 68th Leg., p. 1739, ch. 335, § 2

(e) On receipt, the custodian of a municipal or county treasury may deposit the funds collected under this section in interest-bearing accounts. The custodian shall keep records of the amount of funds on deposit collected under this section and shall remit to the comptroller of public accounts before the 10th day of each month the funds collected under this section during the preceding month. The city and the county may retain five percent of the funds collected under this section as a collection fee. The city or county may also retain all interest accrued on the funds.

Text of subsec. (e) as amended by Acts 1983, 68th Leg., p. 2764, ch. 475, § 1

(e) The custodian of a municipal or county treasury shall keep records of the amount of funds on deposit collected under this section and shall remit to the comptroller of public accounts before the last day of each calendar quarter the funds collected under this section during the preceding quarter. The city and the county may retain 10 percent of the funds collected under this section as a collection fee. If no funds due as costs under this section have been collected in a quarter, the report required for the quarter shall be filed in the regular manner, and the report must state that no funds due under this section were collected.

(f) The comptroller of public accounts shall deposit the funds received by him or her under this section in the Compensation to Victims of Crime Fund. Funds collected are subject to audit by the comptroller and funds expended are subject to audit by the State Auditor.

(g) The board shall establish a policy to adjust awards and payments so that the total amount of awards granted in each calendar year does not exceed the amount of money deposited in the fund during that year.

Text of subsec. (h) as added by Acts 1983, 68th Leg., p. 2764, ch. 475, § 1

(h) If the board finds that a court is not assessing costs due under this section or is not making a reasonable effort to collect the costs, the board shall issue a public letter of warning to the court. If the court is a county court, the board shall send a copy of the letter to the commissioners court of the county in which the court presides. If the court is a municipal court, the board shall send a copy of the letter to the governing body of the municipality in which the court presides.

Text of subsec. (h) as added by Acts 1983, 68th Leg., p. 2822, ch. 483, § 5

(h) If the board finds that a court is not assessing costs due under this section or is not making a reasonable effort to collect the costs, the board may not make any awards under this Act to residents of the jurisdiction served by the court.

Effective date

Sec. 15. Sections 1 through 13 of this Act take effect January 1, 1980. The board may not award reparations for economic loss arising from criminally injurious conduct that occurred before that date. Sections 14 and 15 of this Act take effect September 1, 1979.

Escrow account

Sec. 16. Every firm, person, corporation, association, or other legal entity contracting with a person or the representative or assignee of any person, accused or convicted of crime in this state, with respect to the reenactment of the

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crime in a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment, or from the expression of the accused or convicted person's thoughts, feelings, opinions, or emotions regarding the crime shall submit a copy of the contract to the board and pay to the board any money that would otherwise by terms of the contract be owing to the accused or convicted person or his representatives. The board shall deposit the money in an escrow account.

Funds available to victim

Sec. 17. Money placed in an escrow account is available to satisfy a judgment against the accused or convicted person in favor of a victim of the crime if the court in which the judgment is taken finds that the judgment is for damages incurred by the victim caused by the commission of the crime.

Maintenance of escrow account

Sec. 18. The board shall pay money in an escrow account to the accused person if he is acquitted of the crime. The board shall pay the money in the account to the accused or convicted person if five years elapse from the date when the account was established and the money has not been ordered paid to a victim in satisfaction of a judgment.

Texas Code of Criminal Procedure

Article 42.12

Sec. 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

- a. Commit no offense against the laws of this State or of any other State or of the United States;
- b. Avoid injurious or vicious habits;
- c. Avoid persons or places of disreputable or harmful character;
- d. Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;
- e. Permit the probation officer to visit him at his home or elsewhere;
- f. Work faithfully at suitable employment as far as possible;
- g. Remain within a specified place;
- h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine;
- i. Support his dependents;
- j. Participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 10A(c), (d), (g), and (h) of this article, in any community-based program, including a community-service work program designated by the court;
- k. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an

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amount that would have been paid to an appointed attorney had the county not had a public defender;

l. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

m. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and

n. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

Text of (b) as added by Acts 1983, 68th Leg., p. 1056, ch. 237, § 1

(b) If the court grants probation to a defendant and requires the defendant to serve a probationary term in a restitution center, the court shall require as a condition of probation that the defendant secure employment and obey all rules and regulations of the center.

Text of (b) as added by Acts 1983, 68th Leg., p. 1588, ch. 303, § 10

(b) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 6701-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Subsections (c), (d), (g), and (h), Section 10A of this article, in a community-service work program designated by the court.

Sec. 6c. (a) If a judge sentences a defendant to a term of imprisonment in the Texas Department of Corrections and the defendant is eligible for probation, the judge may suspend imposition of the sentence of imprisonment and require as a condition of probation; in addition to the conditions imposed under Section 6 of this article, that the defendant serve an alternate probationary sentence of not less than six months or more than 12 months in a restitution center if:

- (1) the district is served by a restitution center;
 - (2) the defendant is not sentenced for a felony offense under Title 5, Penal Code,¹ or under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes);
 - (3) before sentencing, the defendant, in writing, requests of the court special issues as to whether the defendant:
 - (A) caused the bodily injury, serious bodily injury, or death of another as a result of the commission of the offense; or
 - (B) used a deadly weapon during the commission of or flight from the offense;
 - (4) the trier of facts answers both issues submitted under Subdivision (3) of this subsection in the negative; and
 - (5) the trier of facts determines that the defendant does not have an extensive history of drug or alcohol abuse and is employable.
- (b) If a jury recommends that an eligible defendant serve an alternate term in a restitution center, the judge shall follow the jury's recommendation.
- (c) A probationer granted probation under this section may not earn good conduct credit for time spent in a restitution center or apply time spent in the center toward completion of a sentence in the Texas Department of Corrections if the probation is revoked.

(d) No later than six months after the date on which a defendant is granted probation under this section, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written

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comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the probationer. If the evaluation indicates that the probationer has made significant progress toward compliance with court-ordered conditions of probation and payment of restitution, the court may release the probationer from the restitution center. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article. The court shall require the probation department to place the probationer under intensive supervision during the first two months after his release.

(e) No later than nine months after the date on which a defendant is granted probation under this section, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the defendant. If the report indicates that the probationer has made significant progress toward court-ordered conditions of probation and payment of restitution, the court shall modify its sentence and release the probationer in the same manner as provided by Subsection (d) of this section. If the report indicates that the probationer would benefit from continued participation in the restitution center program, the court may order the probationer to remain at the restitution center for a period determined by the court. If the report indicates that the probationer has not made significant progress toward rehabilitation, the court may revoke probation and order the prisoner to the term of imprisonment specified in the probationer's sentence.

(f) A restitution center director shall attempt to secure employment for each probationer required to serve a probationary term in a restitution center under this article. The director shall also attempt to place each probationer as a worker in a community-service project of a type described in Section 10A(g) of this article, either during off-work hours if the probationer is employed or during any time if the probationer is unable to find employment.

(g) The employer of a probationer participating in a program under this section shall deliver the probationer's salary to the restitution center director. The director shall deposit the salary into a fund to be given to the probationer on his release after deducting:

- (1) the cost to the center for the probationer's food, housing, and supervision;
- (2) necessary travel expense to and from work and community-service projects and other incidental expenses of the probationer;
- (3) support of the probationer's dependents; and
- (4) restitution to the victims of an offense committed by the probationer.

(h) If a restitution center director is unable to find employment for a probationer, the director shall transfer the probationer to the supervision of the director of another restitution center who agrees to accept the probationer as a participant in the center's program.

(i) If a restitution center director determines that the probationer is knowingly or intentionally failing to seek employment, the director shall request the court having jurisdiction of the case to revoke the probationer's probation and transfer the probationer to the custody of the Texas Department of Corrections.

(j) A restitution center director may grant an emergency furlough to a probationer for the purpose of obtaining medical treatment or diagnosis or to attend funerals or visit critically ill relatives. A furlough for purposes other than medical purposes may not exceed 24 hours in length.

(k) A probationer participating in a program under this article shall be confined in the restitution center at all times except for:

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- (1) time spent at work and traveling to and from work;
- (2) time spent attending and traveling to and from an education or rehabilitation program approved by the restitution center director;
- (3) time spent attending and traveling to and from a community-service project; and

(4) time spent on emergency furlough.

(l) Before sentencing a defendant to an alternate probationary sentence under this section, the court shall consider whether the defendant is a proper subject for probation authorized under Section 3e of this article.

¹ V.T.C.A. Penal Code, § 19.01 et seq.

Text of § 6c as added by Acts 1983, 68th Leg., p. 1711, ch. 325, § 2

Sec. 6c. (a) If a payment is received under Subdivision h or n of Section 6 of this article from a probationer for transmittal to a victim of an offense and the victim cannot be located, the probation department that receives the payment for disbursement to the victim shall deposit the payment in an interest-bearing account in the department having original jurisdiction.

(b) If the payment is not claimed by the victim before the expiration of four years after the date on which the first unsuccessful attempt to locate the victim after full restitution has been made, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.

(c) The collection fee and the accrued interest shall be deposited in the special fund of the county treasury provided by Section 4.05(b), Article 42.121, of this code to be used for the same purposes for which state aid may be used under that section. The probation department has a maximum of 121 days after the four-year expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.

(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the probation department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.

Sec. 10A. Deferred Adjudication and Performance of Community Service.

(a) Except for a defendant charged with an offense under Article 6701i-1, Revised Statutes, as amended, a defendant who pleads guilty or nolo contendere to a first offense felony that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum punishment assessed against the defendant does not exceed 10 years' imprisonment is eligible for community-service restitution probation.

(b) The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, upon application of an eligible defendant and after receiving the defendant's plea, hearing the evidence, and finding that it substantiates the defendant's guilt, to defer further proceedings without entering an adjudication of guilt and place the defendant on community-service restitution probation.

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(c) If the court places a defendant on community-service restitution probation, the court shall require, as a condition of the probation, that the defendant work a specified number of hours at a specified community-service project for an organization named in the court's order.

(d) The amount of community-service work ordered by the court:

(1) may not exceed 1,000 hours and may not be less than 320 hours for an offense classified as a first degree felony;

(2) may not exceed 800 hours and may not be less than 240 hours for an offense classified as a second degree felony; and

(3) may not exceed 600 hours and may not be less than 160 hours for an offense classified as a third degree felony.

(e) The terms of community-service restitution probation shall include the condition that the defendant shall:

(1) work faithfully at the community-service task assigned by the court; and

(2) make restitution and/or reparation to the victim of the offense and any other person who suffered loss of property or physical injury as a result of the offense as ordered by the court; and shall include, but shall not be limited to, the conditions set forth in Sections 6 and 6a of this article.

(f) The clerk of a court granting community-service restitution probation shall promptly furnish the probationer with a written statement of the period and terms of the probation.

(g) Community-service work authorized pursuant to this section must be for any nonprofit organization that has agreed to accept community-service probationers and supervise and report on their work and whose services are provided to the general public and are designed to enhance the social welfare, physical or mental stability, environmental quality, or general well-being of the community.

(h) The court shall select community-service tasks that may be performed during hours the probationer is not working or attending school and that are within the probationer's capabilities. A probationer may not receive compensation for community-service work.

(i) On violation of a condition of community-service probation, the defendant may be arrested and detained as provided in Section 8 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(j) Except as provided in Subsection (k) of this section on satisfactory completion by a probationer of the required amount of community-service restitution work and full payment of restitution as ordered by the court, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that on conviction of a subsequent offense the fact that the defendant previously received community-service probation is admissible on the issue of penalty.

(k) The provisions of Subsection (j) of this section do not apply to a defendant charged with an offense listed in Section 4.012(b), Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes). On satisfactory completion of probation by a defendant charged with such an offense, the court shall adjudge the defendant guilty of the offense and shall discharge him without further punishment.

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(g) The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole. The conditions shall include the making of restitution or reparation to the victim of the prisoner's crime, in an amount not greater than such restitution or reparation as established by the court and entered in the sentence of the court which sentenced the prisoner to his term of imprisonment. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision.

Texas Code of Criminal Procedure

Article 42.13

Sec. 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer and shall note the date of delivery of such delivery on the docket. Terms and conditions of probation may include but shall not be limited to the conditions that the probationer shall:

(8) pay his fine, if one be assessed, and all court costs, whether a fine be assessed or not, in one or several sums and make restitution or reparation in any sum that the court shall determine;

(14) pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

Sec. 6d. (a) If a payment is received under Section 6(8) or (14) of this article for transmittal to a victim of the offense and the victim cannot be located, the probation department that receives the payment for disbursement to the victim shall deposit the payment in an interest-bearing account in the department having original jurisdiction.

(b) If the payment is not claimed by the victim before the expiration of four years after the date on which the first unsuccessful attempt to locate the victim after full restitution has been made, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.

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(c) The collection fee and the accrued interest shall be deposited in the special fund of the county treasury provided by Section 4.05(b), Article 42.121, of this code to be used for the same purposes for which state aid may be used under that section. The probation department has a maximum of 121 days after the four-year expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.

(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the probation department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.

Text of Section 6d as added by Acts 1983, 68th Leg., p. 4877, ch. 863, § 2

Sec. 6d. A court receiving a probationer for supervision as authorized by Article 42.11 of this code may impose on the probationer any term of probation authorized by Section 6 of this article, and may require the probationer to pay the fee authorized by Section 6a of this article. Fees received under this section shall be deposited in the same manner as required by Section 6a(b) of this article.

Sec. 7. At any time after the defendant has satisfactorily completed one-third of the original probationary period, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation and the expiration of the period of probation, the court by order duly entered shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, and the court has discharged the defendant hereunder, such court shall set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information, or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which defendant has been convicted or to which defendant has pleaded guilty or pleaded nolo contendere, except that proof of defendant's conviction or plea of guilty or nolo contendere shall be made known to the court should the defendant again be convicted of any criminal offense.

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Texas Civil Statutes

Art. 6166x-3. Work furloughs

Employment of prisoners outside the state prison system

Section 1. The Texas Department of Corrections is hereby authorized to grant work furlough privileges, under the "Work Furlough Plan," as hereinafter provided, which may include programs and procedures for inmates to contribute restitution or reparation to victims of the prisoner's crime, as established by the judgment of the court that sentenced the prisoner to his term of imprisonment, to any inmate of the state prison system serving a term of imprisonment, under such rules, regulations, and conditions as the department of corrections may prescribe. Sec. 1 amended by Acts 1977, 65th Leg., p. 933, ch. 347, § 5, eff. Aug. 29, 1977.

Texas Work Furlough Program Advisory Board

Sec. 1A. (a) The Texas Work Furlough Program Advisory Board is hereby created. Its main office is in Huntsville, Texas, at the location of the office of the director of the Texas Department of Corrections.

Sec. 6. Every prisoner gainfully employed under work furlough privileges is liable for the cost of his keep in the prison or quarters as may be fixed by the department of corrections. Such payments shall be deposited to the general operating expenses of the department of corrections. After deduction of such amounts the director of the department of corrections shall disburse the wages or salaries of employed prisoners for the following purposes and in the order stated:

- (1) necessary travel expense to and from work and other incidental expenses of the prisoner;
- (2) support of the prisoner's dependents, if any;
- (3) restitution or reparation to the victim of the prisoner's crime for which he is serving a term of imprisonment, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court that sentenced the prisoner to his term of imprisonment;
- (4) the balance, if any, to the prisoner upon his discharge.

Texas Code of Criminal Procedure

Art. 24.16 [475] [539] Application for out-county witness

Where, in misdemeanor cases in which confinement in jail is a permissible punishment, or in felony cases, a witness resides out of the county in which the prosecution is pending, the State or the defendant shall be entitled, either in term-time or in vacation, to a subpoena to compel the attendance of such witness on application to the proper clerk or magistrate. Such application shall be in the manner and form as provided in Article 24.03. Witnesses in such misdemeanor cases shall be compensated in the same manner as in felony cases. This Article shall not apply to more than one character witness in a misdemeanor case. Acts 1965, 59th Leg., vol. 2, p. 317, ch.

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Texas Code of Criminal Procedure

§ 36.05. Tampering with Witness

(a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding:

- (1) to testify falsely;
- (2) to withhold any testimony, information, document, or thing;
- (3) to elude legal process summoning him to testify or supply evidence; or
- (4) to absent himself from an official proceeding to which he has been legally summoned.

(b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a) of this section.

(c) An offense under this section is a felony of the third degree.

(a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness, prospective witness, or informant.

Texas Penal Code

CHAPTER FORTY-SEVEN

DISPOSITION OF STOLEN PROPERTY

Art.

- 47.01. Subject to order of court.
- 47.01a. Restoration when no trial is pending.
- 47.02. Restored on trial.
- 47.03. Schedule.
- 47.04. Restored to owner.
- 47.05. Bond required.
- 47.06. Property sold.
- 47.07. Owner may recover.
- 47.08. Written instrument.
- 47.09. Claimant to pay charges.
- 47.10. Charges of officer.
- 47.11. Scope of Chapter.

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Article 47.01. [933] [1031] [996] Subject to order of court

An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court or magistrate.

Art. 47.01a. Restoration when no trial is pending

If no criminal action is pending, a magistrate of the county or city in which the property is being held may hold a hearing to determine the right to possession of the property, upon the petition of any interested person. The magistrate shall order the property delivered to whoever has the superior right to possession, subject to the condition that the property be made available to the prosecuting authority should it be needed in the future, or the magistrate may remand the property to the custody of the peace officer.

Added by Acts 1977, 65th Leg., p. 2034, ch. 813, § 1, eff. Aug. 29, 1977.

Library References

Criminal Law ⇐1221.

C.J.S. Criminal Law §§ 2004, 2006.

Art. 47.02. [934] [1032] [997] Restored on trial

Upon the trial of any criminal action for theft, or for any other illegal acquisition of property which is by law a penal offense, the court trying the case shall order the property to be restored to the person appearing by the proof to be the owner of the same.

Likewise, the judge of any court in which the trial of any criminal action for theft or any other illegal acquisition of property which is by law a penal offense is pending may, upon hearing, if it is proved to the satisfaction of the judge of said court that any person is a true owner of the property alleged to have been stolen, and which is in possession of a peace officer, by written order, direct the property to be restored to such owner.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

SPECIAL COMMENTARY

by Hon. John F. Onion, Jr.

A second paragraph has been added allowing the trial judge to return the stolen property to the owner pending the trial if the

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Art. 47.03. [935] [1033] [998] Schedule

When an officer seizes property alleged to have been stolen, he shall immediately file a schedule of the same, and its value, with the magistrate or court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefor.

Art. 47.04. [936] [1034] [999] Restored to owner

Upon an examining trial, if it is proven to the satisfaction of the magistrate that any person is the true owner of property alleged to have been stolen, and which is in possession of a peace officer, he may upon motion by the state, by written order direct the property to be restored to such owner subject to the conditions that such property shall be made available to the state or by order of any court having jurisdiction over the offense to be used for evidentiary purposes.

Art. 47.05. [937] [1035-6] Bond required

If the magistrate has any doubt as to the ownership of the property, he may require a bond of the claimant for its re-delivery in case it should thereafter be shown not to belong to such claimant; or he may, in his discretion, direct the property to be retained by the sheriff until further orders as to its possession. Such bond shall be in a sum equal to the value of the property, with sufficient security, payable to and approved by the county judge of the county in which the property is in custody. Such bond shall be filed in the office of the county clerk of such county, and in case of a breach thereof may be sued upon in such county by any claimant of the property; or by the county treasurer of such county.

Texas Penal Code

§ 22.04. Injury to a Child or an Elderly Individual

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that causes to a child who is 14 years of age or younger or to an individual who is 65 years of age or older:

- (1) serious bodily injury;
- (2) serious physical or mental deficiency or impairment;
- (3) disfigurement or deformity; or
- (4) bodily injury.

(b) An offense under Subsection (a)(1), (2), or (3) of this section is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a felony of the third degree.

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(c) An offense under Subsection (a)(4) of this section is a felony of the third degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a Class A misdemeanor.

(d) An offense under Subsection (a) of this section when the person acts with criminal negligence shall be a Class A misdemeanor.

Texas Human Resources Code

CHAPTER 48. PROTECTIVE SERVICES FOR THE ELDERLY

SUBCHAPTER A. GENERAL PROVISIONS

- Sec.
48.001. Purpose.
48.002. Definitions.

SUBCHAPTER C. REPORTS OF SUSPECTED ABUSE, EXPLOITATION, OR NEGLECT

- Sec.
48.036. Report.
48.037. Action on Report.
48.038. Implementation of Investigation.
48.039. Immunity.
48.040. Representation.

SUBCHAPTER D. PROTECTIVE SERVICES

- 48.056. Agency Powers.
48.057. Agency Reports.

Cross References

Injury to elderly individual, crimes and offenses, see V.T.C.A. Penal Code, § 22.04.

Library References

Social Security and Public Welfare
§ 194.30.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- Sec.
48.021. Provision of Services.

Sec.

- 48.058. Cost of Services.
48.059. Voluntary Protective Services.
48.060. Interference with Voluntary Services Prohibited.
48.061. Emergency Order for Protective Services.

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

- 48.083. Confidentiality of Records.
48.084. Objection to Medical Treatment.

C.J.S. Social Security and Public Welfare
§ 124.

SUBCHAPTER A. GENERAL PROVISIONS

Section 48.001. Purpose

The purpose of this chapter is to provide for the right to investigate the abuse, exploitation, or neglect of an elderly or disabled person.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. Inserted "or disabled".

§ 48.002. Definitions

In this chapter:

(1) "Elderly person" means a person 65 years of age or older.

(2) "Abuse" means the wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or pain or mental anguish or the wilful deprivation by a caretaker or one's self of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.

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(3) "Exploitation" means the illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

(4) "Neglect" means the failure to provide for one's self the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services.

(5) "Protective services" means the services furnished by the department or by a protective services agency to an elderly or disabled person who has been determined to be in a state of abuse, exploitation, or neglect. These services may include investigation of reported abuse, social casework, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, and other services consistent with this chapter.

(6) "Protective services agency" means a public or private agency, corporation, board, or organization that provides protective services to elderly or disabled persons in the state of abuse, exploitation, or neglect.

(7) "Department" means the Department of Human Resources.

* * *

(8) "Disabled person" means a person with a mental, physical, or developmental disability between the ages of 18 and 65 years of age.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 274, ch. 51, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendments. In subd. (7), chs. 51 and 172 both deleted "from the effective date of this Act through August 31, 1983. From September 1, 1983, 'department' means the Department on Aging". In addition, ch. 172 inserted "or disabled" in subd. (3), the first sentence of subd. (5), and subd. (6) and added subd. (8).

Cross References

Definitions for purposes of this title, see § 11.001.

[Sections 48.003 to 48.020 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 48.021. Provision of Services

(a) The department may provide direct protective services or contract with protective services agencies for the provisions of those services.

(b) The department shall use existing resources and services of public and private agencies in providing protective services.

(c) The department shall cooperate with the appropriate law enforcement officials, courts, and agencies when providing protective services.

(d) The responsibilities set forth in this Act shall be exclusive of those designated to other state or federal agencies authorized or required by law to provide protective services to elderly or disabled persons determined to be in the state of abuse, exploitation, or neglect.

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SUBCHAPTER C. REPORTS OF SUSPECTED ABUSE, EXPLOITATION, OR NEGLECT

§ 48.036. Report

(a) A person having reasonable cause to believe that an elderly or disabled person is in the state of abuse, exploitation, or neglect shall report the information to the department.

(b) The report may be made orally or in writing. It shall include:

(1) the name, age, and address of the elderly or disabled person;

(2) the name and address of any person responsible for the elderly or disabled person's care;

(3) the nature and extent of the elderly or disabled person's condition;

(4) the basis of the reporter's knowledge; and

(5) any other relevant information.

§ 48.037. Action on Report

Not later than 24 hours upon receipt of a report of suspected need for protective services, the department shall initiate a prompt and thorough investigation to determine whether the elderly or disabled person is in need of protective services, unless the department determines that the report is frivolous or patently without a factual basis.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. Inserted "or disabled".

§ 48.038. Implementation of Investigation

(a) In the investigation the department shall determine:

(1) whether the person needs protective services;

(2) what services are needed;

(3) whether services are available from the department or in the community and how they can be provided;

(4) whether the person would be capable of obtaining services for himself and could bear the cost or would be eligible for services from the department;

(5) whether a caretaker would be willing to provide services or would agree to their provisions;

(6) whether the elderly or disabled person desires the services; and

(7) other pertinent data.

(b) The department's investigation shall include a visit to the elderly or disabled person's home and consultation with persons thought to have knowledge of the circumstances.

(c) To implement an investigation of reported abuse, exploitation, or neglect, the probate court, or the county court when no probate court exists, may authorize entry of the premises of the elderly or disabled person.

(d) A peace officer shall accompany the person making a forcible entry under this section, if in the opinion of the court such action is necessary.

(e) The department shall prepare and keep on file a complete written report of each investigation.

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(f) If the investigation reveals that the elderly or disabled person has been physically abused by another person, a copy of the report of the investigation shall be submitted to the appropriate law enforcement agency.

(g) If the elderly or disabled person has a guardian, a copy of the report shall be filed with the court to which the guardian is accountable.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. Inserted "or disabled" in subd. (a)(6) and subsecs. (b), (c), (f), and (g).

§ 48.039. Immunity

A person filing a report under this chapter, participating in an investigation required by this chapter, or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. Made no changes in the section.

§ 48.040. Representation

(a) The prosecuting attorney representing the state in criminal cases in the county court shall represent the department in any proceeding brought by the department under this chapter.

(b) The court shall appoint an attorney ad litem to represent the elderly or disabled person in any proceeding brought by the department under this chapter. A reasonable fee, as determined by the court, shall be paid to the attorney ad litem from the General Fund of the county.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. In the first sentence of subsec. (b) inserted "or disabled".

[Sections 48.041 to 48.055 reserved for expansion]

SUBCHAPTER D. PROTECTIVE SERVICES

§ 48.056. Agency Powers

A protective services agency may furnish protective services to an elderly or disabled person with the person's consent.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. Inserted "or disabled".

§ 48.057. Agency Reports

A protective services agency shall make reports relating to its provision of protective services as the department or a court may require.

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§ 48.058. Cost of Services

If the elderly or disabled person receiving the protective services is determined to be financially able to contribute to the payments for those services, the provider shall receive a reasonable reimbursement from the person's assets.

§ 48.059. Voluntary Protective Services

(a) An elderly or disabled person may receive voluntary protective services if the person requests or consents to receive those services.

(b) The elderly or disabled person who receives protective services shall participate in all decisions regarding his or her welfare, if able to do so.

(c) The least restrictive alternatives should be made available to the elderly or disabled person who receives protective services.

(d) If an elderly or disabled person withdraws or refuses consent, the services may not be provided.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. Inserted "or disabled" in subsecs. (a) to (d).

§ 48.060. Interference with Voluntary Services Prohibited

(a) A person may not interfere with the provision of voluntary protective services to an elderly or disabled person.

(b) The department or a protective services agency may petition the appropriate court to enjoin any interference with the provision of voluntary protective services.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. In subsec. (a) inserted "or disabled".

§ 48.061. Emergency Order for Protective Services

(a) For purposes of this section, a person lacks the capacity to consent to receive protective services if, because of mental or physical impairment, the person is incapable of understanding the nature of the services offered and agreeing to receive or rejecting protective services.

(b) If the department determines that an elderly or disabled person is suffering from abuse or neglect presenting an immediate threat to life, that the person lacks capacity to consent to receive protective services, and that no consent can be obtained, the department may petition the district court in the county in which the elderly or disabled person resides for an emergency order authorizing protective services.

(c) The petition shall be verified and shall include the name, age, and address of the elderly or disabled person who needs protective services, the nature of the abuse or neglect, the services needed, and a medical report signed by a physician stating that the person is suffering from abuse or neglect presenting an immediate threat to life and stating that the person is physically or mentally incapable of consenting to services.

(d) On finding that there is reasonable cause to believe that abuse or neglect presents an immediate threat to life for the elderly or disabled person and that the elderly or disabled person lacks capacity to consent to services, the court may order removal of the elderly or disabled person to safer surroundings, authorize medical treatment, and order other available services necessary to remove conditions creating the immediate threat to life. The court shall appoint an

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attorney ad litem to represent the interests of the elderly or disabled person at the first or a subsequent hearing.

(e) The emergency order expires at the end of 72 hours from the time of the order and may be renewed once for 72 hours.

(f) Any medical facility or physician treating an elderly or disabled person pursuant to an emergency order under this chapter is not liable for any damages arising from the treatment, except those damages resulting from the negligence of the facility or physician.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. Inserted "or disabled" throughout the section.

[Sections 48.062 to 48.082 reserved for expansion]

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

§ 48.083. Confidentiality of Records

The records of the department or other agency pertaining to an elderly or disabled person who is protected under this chapter or for whom an application for protection has been made are not open to public inspection. Information contained in the records may not be disclosed publicly in a manner that will identify an individual, but the records shall be available on application for cause to persons approved by the court having jurisdiction of the case under Chapter V, Texas Probate Code.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, § 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, § 1, eff. Sept. 1, 1983.

1983 Amendment. Inserted "or disabled" in the first sentence.

§ 48.084. Objection to Medical Treatment

This chapter does not authorize or require any medical treatment of a person who objects on the grounds that he is an adherent or member of a recognized church or religious denomination the tenets and practice of which include reliance solely upon spiritual means through prayer for healing.

Texas Civil Statutes

Art. 4447m. Costs of medical examinations of sexual assault victims

Section 1. Any law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination.

Sec. 2. This Act does not require a law enforcement agency to pay any costs of treatment for injuries.

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Texas Code of Criminal Procedure

Art. 38.071. Testimony of child who is victim of offense

Section 1. This article applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under Chapter 21, Penal Code, as amended, or Section 43.25, Penal Code, as amended, alleged to have been committed against a child 12 years of age or younger, and applies only to the statements or testimony of that child.

Sec. 2. (a) The recording of an oral statement of the child made before the proceeding begins is admissible into evidence if:

- (1) no attorney for either party was present when the statement was made;
- (2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (3) the recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and has not been altered;
- (4) the statement was not made in response to questioning calculated to lead the child to make a particular statement;
- (5) every voice on the recording is identified;
- (6) the person conducting the interview of the child in the recording is present at the proceeding and available to testify or be cross-examined by either party;
- (7) the defendant or the attorney for the defendant is afforded an opportunity to view the recording before it is offered into evidence; and
- (8) the child is available to testify.

(b) If the electronic recording of the oral statement of a child is admitted into evidence under this section, either party may call the child to testify, and the opposing party may cross-examine the child.

Sec. 3. The court may, on the motion of the attorney for any party, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.

Sec. 4. The court may, on the motion of the attorney for any party, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under Section 3 of this article may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by Section 3. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:

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- (1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;
- (2) the recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;
- (3) each voice on the recording is identified; and
- (4) each party is afforded an opportunity to view the recording before it is shown in the courtroom.

Sec. 5. If the court orders the testimony of a child to be taken under Section 3 or 4 of this article, the child may not be required to testify in court at the proceeding for which the testimony was taken.

Texas Family Code

CHAPTER 71. PROTECTIVE ORDERS

Sec.		Sec.	
71.01.	Definitions.	71.11.	Protective Order.
71.02.	Commencement of Proceeding.	71.12.	Agreed Orders.
71.03.	Venue.	71.13.	Duration of Protective Orders.
71.04.	Application for Protective Order.	71.14.	Modification of Orders.
71.05.	Contents of Application.	71.15.	Temporary Orders.
71.06.	Dismissal of Application.	71.16.	Warning on Protective Order.
71.07.	Citation.	71.17.	Copies of Orders.
71.08.	Answer.	71.18.	Duties of Law Enforcement Agencies.
71.09.	Hearing.	71.19.	Relief Cumulative.
71.10.	Findings.		

Cross References

Masters, Travis County courts having jurisdiction of suits arising under this title, see Vernon's Ann.Civ.St. art. 1918d, § 1(a).
Shelter centers for victims of family violence, see V.T.C.A. Human Resources Code, § 51.001 et seq.
Testimony of child, proceedings under this title, see § 11.21(a).

Law Review Commentaries

Annual survey of Texas law: Family law—Husband and wife. Joseph W.

McKnight, 34 Southwestern L.J. (Tex.) 115 (1980).

Annual survey of Texas law: Family law—Parent and child. Ellen K. Solender, 34 Southwestern L.J. (Tex.) 159 (1980).

Family Code Symposium; protection of the family. Leota Alexander, 13 Texas Tech L.Rev. 1261 (1982).

Section 71.01. Definitions

(a) Except as provided by Subsection (b) of this section, the definitions in Section 11.01 of this code apply to terms used in this chapter.

(b) In this chapter:

- (1) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle or a county court.
- (2) "Family violence" means the intentional use or threat of physical force by a member of a family or household against another member of the family or household, but does not include the reasonable discipline of a child by a person having that duty.
- (3) "Family" includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, and a foster child and foster parent, whether or not those individuals reside together.

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- (4) "Household" means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.
- (5) "Member of a household" includes a former member of a household who has filed an application or for whom protection is sought as provided by Subsection (c) of Section 71.04 of this code.

§ 71.02. Commencement of Proceeding

A proceeding under this chapter is commenced by the filing of an application for a protective order with the clerk of the court.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

§ 71.03. Venue

An application may be filed:

- (1) in the county whether the applicant resides; or
- (2) in the county where an individual alleged to have committed family violence resides.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

Notes of Decisions

1. In general

Application for protective order to prevent family violence brought under this title may be made in county where either appli-

cant or respondent resides even though children for whom protective order is sought may be subject to continuing jurisdiction of another court, and transfer of such a proceeding is appealable venue order. Magill v. Sheffield (Civ.App.1981) 612 S.W.2d 677.

§ 71.04. Application for Protective Order

(a) An application under this chapter is entitled "An application for a protective order."

(b) An application may be filed by:

- (1) an adult member of a family or household for the protection of the applicant or for any other member of the family or household;
- (2) any adult for the protection of a child member of a family or household; or
- (3) any prosecuting attorney who serves the county in which the application is to be filed and who represents the state in a district or statutory county court for the protection of any person alleged to be a victim of family violence.

(c) A person who was a member of a household at the time the alleged family violence was committed is not barred from filing an application or from protection under this chapter even if the person no longer resides in the same household with the person who is alleged to have committed the family violence.

(d) The fee for filing an application is \$16 and is to be paid to the clerk of the court in which the application is filed. If the applicant files a sworn statement that the applicant is unable to pay the filing fee and other court costs, the court, on a finding that the statement is true, shall waive the fee and costs that may be due or become due from the applicant. A hearing on the issue of the waiver of the fee and cost, if requested by a party or if required by the court, must be held within three days of the request by a party or of the court's requirement.

(e) If the application is filed by a prosecuting attorney under Subdivision (3) of Subsection (b) of this section, the court may assess a reasonable attorney's fee as compensation for the services of the prosecuting attorney. The attorney's fee

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may be assessed against the party represented by the attorney or against any other party who is found to have committed family violence. In setting the amount of the fee, the court shall consider the income and ability to pay of the person against whom the fee is assessed. The amount of fees collected under this section shall be paid to the credit of the county fund from which the salaries of employees of the prosecuting attorney are paid or supplemented.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 3857, ch. 607, § 2, eff. Aug. 29, 1983.

1983 Amendment. In subsec. (b), in subd. (1) deleted "or" following "family or household;" in subd. (2) added "; or", and added subd. (3); in subsec. (d) added the second and third sentences; and added subsec. (e).

Cross References

Member of a household defined, see § 71.01(b)(5).

Violation of court orders, former members of household under subsec. (c) of this section, protection, see V.T.C.A. Penal Code, § 25.08(b)(4).

Library References

Breach of the Peace \Rightarrow 20.

C.J.S. Breach of the Peace §§ 22, 23.

§ 71.05. Contents of Application

(a) An application must state:

(1) the name and county of residence of each applicant and the name, address, and county of residence of each individual alleged to have committed family violence;

(2) the facts and circumstances concerning the alleged family violence;

(3) the relationships between the applicants and the individuals alleged to have committed family violence; and

(4) a request for one or more protective orders.

(b) If an application requests a protective order for a spouse and alleges that the other spouse has committed family violence, the application must state that no suit for the dissolution of the marriage of the spouses is pending.

(c) If an applicant is a former spouse of an individual alleged to have committed family violence:

(1) a copy of the decree dissolving the marriage must be attached to the application; or

(2) the application must state that the decree is unavailable to the applicant and that a copy of the decree will be filed with the court before the hearing on the application.

(d) If an application requests a protective order for a child who is subject to the continuing jurisdiction of a court under Subtitle A, Title 2, of this code¹ or alleges that a child who is subject to the continuing jurisdiction of a court under Subtitle A, Title 2, of this code has committed family violence:

(1) a copy of the court orders affecting the conservatorship, possession, and support of or the access to the child must be filed with the application; or

(2) the application must state that the orders affecting the child are unavailable to the applicant and that a copy of the orders will be filed with the court before the hearing on the application.

(e) If the application requests the issuance of a temporary ex parte order under Section 71.15 of this code, the application must:

(1) contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for immediate protective orders; and

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(2) be signed by each applicant under an oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 3858, ch. 607, § 3, eff. Aug. 29, 1983.

¹ Section 11.01 et seq.

1983 Amendment. In subsec. (a)(1), deleted "address," following "the name" at the beginning and inserted "the name, address, and county of the residence".

§ 71.06. Dismissal of Application

If a suit for the dissolution of marriage has been filed before the date on which an application for a protective order is filed and that suit is pending on the date that the application is filed, no application or portion of an application involving the relationship between the spouses or their respective rights, duties, or powers may be considered, and the application or portion of the application relating to those parties shall be dismissed.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 3859, ch. 607, § 4, eff. Aug. 29, 1983.

1983 Amendment. Substituted "has and that suit is pending on the date that the been filed before the date on which an application is filed" for "is pending".

§ 71.07. Citation

(a) Each individual, other than an applicant, who is alleged to have committed family violence is entitled to service of citation on the filing of an application.

(b) Service of citation is not required before the issuance of a temporary ex parte order under Section 71.15 of this code.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

Library References

Breach of the Peace \Rightarrow 16.

C.J.S. Breach of the Peace § 17.

§ 71.08. Answer

An individual served with citation may but is not required to file a written answer to the application. The answer may be filed at any time before the hearing.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

§ 71.09. Hearing

(a) Unless a later date is requested by the applicant, the court, on the filing of an application, shall set a date and time for the hearing on the application. The date must be not later than 20 days after the date the application is filed.

(b) If a person entitled to service of citation is not served at least 48 hours before the time set for the hearing, the hearing must be rescheduled unless the person entitled to service is present at the hearing and waives notice of the hearing.

(c) If a hearing set under Subsection (a) of this section is not held because of the failure of a party to receive service of citation, the applicant may request the court to reschedule the hearing. The date for a rescheduled hearing under this subsection must be not later than 20 days after the date on which the request is made.

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(d) Except as provided by Subsections (a), (b), and (c) of this section, the court may schedule hearings under this chapter as in other civil cases generally. Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

§ 71.10. Findings

(a) At the close of a hearing on an application, the court shall find whether or not family violence has occurred and whether or not family violence is likely to occur in the foreseeable future.

(b) If the court finds that family violence has occurred and that family violence is likely to occur in the foreseeable future, the court may make any protective order authorized by this chapter that is in the best interest of the family or household or a member of the family or household.

(c) A protective order may apply only to an individual, including an applicant, who is a party to the proceeding and who:

- (1) is found to have committed family violence; or
- (2) has agreed to the order under Section 71.12 of this code.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

§ 71.11. Protective Order

(a) In a protective order the court may:

(1) prohibit a party from:

(A) removing a child member of the family or household from the possession of a person named in the court order or from the jurisdiction of the court; or

(B) transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;

(2) grant exclusive possession of a residence to a party and, if appropriate, direct one or more other parties to vacate the residence if:

(A) the residence is jointly owned or leased by the party receiving exclusive possession and by some other party denied possession;

(B) the residence is owned or leased by the party retaining possession; or

(C) the residence is owned or leased by the party denied possession but only if that party has an obligation to support the party granted possession of the residence or a child of the party granted possession;

(3) provide for possession of and access to a child of a party;

(4) require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child;

(5) require one or more parties to counsel with a social worker, family service agency, physician, psychologist, or any other person qualified to provide psychological or social guidance;

(6) award to a party use and possession of specified property that is community property or jointly owned or leased; or

(7) prohibit a party from doing specified acts or require a party to do specified acts necessary or appropriate to prevent or reduce the likelihood of family violence.

(b) In a protective order the court may prohibit a party from:

(1) committing family violence;

(2) directly communicating with a member of the family or household in a threatening or harassing manner;

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(3) going to or near the residence or place of employment or business of a member of the family or household. The court shall specifically describe the prohibited locations and the minimum distances therefrom, if any, that the party must maintain.

(c) A protective order or an agreement approved by the court under this chapter does not affect the title to real property.

(d) A protective order made under this section that conflicts with any other court order made under Subtitle A, Title 2, of this code¹ is to the extent of the conflict invalid and unenforceable.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4047, ch. 631, § 2, eff. Sept. 1, 1983.

¹ Section 11.01 et seq.

1983 Amendment. In subsec. (a) deleted former pars. (A) to (C) of subd. (1) which prior thereto read:

"(A) committing family violence; (B) directly or indirectly communicating with a member of the family or household; (C) going to or near the residence or place of employment or business of a member of the family or household or any other place a member of the family or household may be;"

and redesignated former pars. (D) and (E) as (A) and (B); inserted a new subsec. (b); and redesignated former subsecs. (b) and (c) as (c) and (d).

Cross References

Duration of protective orders, see § 71.13.

Family violence, parties to suit for divorce or annulment, protective orders under subsec. (b) of this section, see § 3.581(a).

Violation of orders issued under this section, offense, see V.T.C.A. Penal Code, § 25.08(a).

§ 71.12. Agreed Orders

(a) To facilitate the settlement of a proceeding under this chapter, two or more parties to the proceeding may agree in writing, subject to the approval of the court, to do or refrain from doing any act that the court could order under Section 71.11 of this code. If all or part of an agreement is approved by the court, the part of the agreement approved shall be attached to the protective order and become a part of the order of the court.

(b) An agreement that is made a part of the court's order is enforceable as a court order and is not enforceable as a contract. The agreement expires when the court order expires.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

§ 71.13. Duration of Protective Orders

(a) An order made under Section 71.11 of this code is effective for the period specified in the order, not to exceed one year.

(b) An order of a court having jurisdiction of a suit for divorce or annulment prevails, to the extent of conflict only, over a conflicting portion of an order made under this title and relating to the parties to the suit for divorce or annulment.

Library References

Breach of the Peace § 20.

C.J.S. Breach of the Peace §§ 22, 23.

Notes of Decisions

1. In general

Application for protective order to prevent family violence requesting temporary ex parte relief as authorized by this section was a proper proceeding under § 71.01 et seq., and not a suit affecting parent-child relationship subject to continuing jurisdiction of divorce court. *Magill v. Sheffield* (Civ.App.1981) 612 S.W.2d 677.

Application for protective order to prevent family violence brought under this title may be made in county where either applicant or respondent resides even though children for whom protective order is sought may be subject to continuing jurisdiction of another court, and transfer of such a proceeding is appealable venue order. *Id.*

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§ 71.14. Modification of Orders

(a) On the motion of any party, the court, after notice to the other parties and a hearing, may modify a prior order to exclude any item included in the prior order or to include any item that could have been included in the prior order.

(b) An order may not be modified to extend the period of its validity beyond one year after the date the original order was made.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

§ 71.15. Temporary Orders

(a) If the court finds from the information contained in an application that there is a clear and present danger of family violence, the court, without further notice to any other member of the family or household and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household. The court may direct any member of the family or household who is alleged to have committed family violence to do or refrain from doing specified acts.

(b) A temporary ex parte order is valid for the period specified in the order, not to exceed 20 days.

(c) On the request of an applicant or on the court's own initiative, a temporary ex parte order may be extended for an additional 20 days and may be extended thereafter for additional 20-day periods.

(d) The court in its discretion may dispense with the necessity of a bond in connection with a temporary ex parte order.

(e) Any member of the family or household may at any time file a motion to vacate a temporary ex parte order, and on the filing of the motion the court shall set a date for a hearing on the motion as soon as possible.

(f) During the period of its validity, a temporary ex parte order prevails over any other court order made under Subtitle A, Title 2, of this code,¹ except that on a motion to vacate the temporary ex parte order, the court shall vacate those portions of the temporary order shown to be in conflict with any other court order made under Subtitle A, Title 2, of this code.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

¹ Section 11.01 et seq.

Cross References

Citation not required before ex parte order under this section, see § 71.07(b).

Contents of application for temporary order under this section, see § 71.05(e).

§ 71.16. Warning on Protective Order

(a) Each protective order issued under this chapter, including a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

(b) Each protective order issued under this chapter, except a temporary ex parte order, shall have the following statement printed in bold-faced type or in capital letters:

"A VIOLATION OF THIS ORDER BY COMMISSION OF FAMILY VIOLENCE MAY BE A CRIMINAL OFFENSE PUNISHABLE BY A FINE OF AS

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MUCH AS \$2,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH."

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

Library References

Breach of the Peace § 21.
C.J.S. Breach of the Peace § 24.

ders contain certain warnings, was inapplicable to such temporary orders. Ex parte Fernandez (App.1983) 645 S.W.2d 636.

Notes of Decisions

1. Construction and application

Subsection (a) of this section, which husband contended required that temporary or-

§ 71.17. Copies of Orders

(a) A protective order made under this chapter shall be served on the person to whom the order applies in open court at the close of the hearing or in the same manner as a writ of injunction.

(b) The clerk of the court issuing a protective order under this chapter shall send a copy of the order to the chief of police of the city where the member of the family or household protected by the order resides, if the person resides in a city, or to the sheriff of the county where the person resides, if the person does not reside in a city.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

§ 71.18. Duties of Law Enforcement Agencies

In order to insure that officers responding to calls are aware of the existence and terms of protective orders issued under this chapter, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names of persons protected by order issued under this chapter and of persons to whom protective orders are directed.

Added by Acts 1979, 66th Leg., p. 185, ch. 98, § 11, eff. Sept. 1, 1979.

§ 71.19. Relief Cumulative

Except as provided by this chapter, the relief and remedies provided by this chapter are cumulative of other relief and remedies provided by law.

Texas Human Resources Code

CHAPTER 51. FAMILY VIOLENCE SHELTERS

Sec.		Sec.	
51.001.	Purpose.	51.007.	Confidentiality.
51.002.	Definitions.	51.008.	Consultations.
51.003.	Contracts.	51.009.	Grants and Funds.
51.004.	Contract Bids.	51.010.	Rules.
51.005.	Contract Specifications.	51.011.	Funding.
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Section 51.001. Purpose

The purpose of this chapter is to promote the development of locally based and supported nonprofit shelters and services for victims of family violence. Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.002. Definitions

In this chapter:

(1) "Shelter center" means a program that is operated by a public or private nonprofit organization and that provides shelter and services to victims of family violence.

(2) "Victim of family violence" means:

(A) an adult who is subjected to physical force or the threat of physical force by another who is related by affinity or consanguinity to that adult, who is a former spouse of that adult, or who resides in the same household with that adult; or

(B) an individual, other than an individual using physical force or the threat of physical force, who resides in the same household with a victim of family violence as defined in Paragraph (A) of this subdivision.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.003. Contracts

(a) The Texas Department of Human Resources shall contract for services with shelter centers that provide access to shelter and services to victims of family violence with consideration given to geographic distribution and need. These contracts are to expand existing shelter center services and may not result in reducing financial support a shelter center receives from another source. The contracts shall not provide for more than 75 percent of the cost of the shelter center program. The department shall develop a declining scale of state financial support for shelter centers, declining over a six-year period from the initiation of each individual contract, with no more than 50 percent of a shelter center program's funding to be provided by the state after the sixth year. The balance each year shall be provided from other sources. The department may adopt rules which will allow exceptions to the above scale in individual instances when a shelter center shall demonstrate that exigent circumstances require such a waiver.

(b) The department shall contract for the provision of training, technical assistance, and evaluation related to shelter and service program development and criminal justice processes.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.004. Contract Bids

(a) To be eligible for a contract, a public or private nonprofit organization must operate a shelter center that provides temporary lodging and social services for adults and their children who have left or have been removed from the family home because of family violence. The shelter center must have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five persons for at least nine months before the date that the contract is awarded. The contract application must be submitted on forms prescribed by the department.

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(b) The department shall consider the following factors in awarding the contracts:

(1) the shelter center's eligibility for and use of funds from the federal government, philanthropic organizations, and voluntary sources;

(2) community support for the shelter center as evidence by financial contributions from civic organizations, local governments, and individuals;

(3) evidence that the shelter center provides services that encourage rehabilitation and effectively utilizes community resources;

(4) the endorsement and involvement of local law enforcement officials;

(5) support for the shelter center through volunteer work, especially volunteer effort by persons who have been victims of family violence; and

(6) the shelter center's efforts to provide services to violent family members and to encourage family reconciliation if rehabilitation occurs.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.005. Contract Specifications

(a) The department shall contract only with shelter centers that fulfill the requirements of this chapter.

(b) The contracts shall require the persons operating a shelter center to:

(1) make a quarterly and an annual financial report on a form prescribed by the department;

(2) cooperate with inspections the department makes to ensure services standards and fiscal responsibility; and

(3) provide as a minimum access to the following:

(A) 24-hour-a-day shelter;

(B) a crisis call hotline available 24 hours a day;

(C) emergency medical care;

(D) counseling or psychological services;

(E) emergency transportation;

(F) legal assistance, as available;

(G) educational arrangements for children;

(H) information about training for and seeking employment;

(I) cooperation with law enforcement officials;

(J) community education;

(K) a referral system to existing community services; and

(L) a volunteer recruitment and training program.

(c) The contracts may require the persons operating a shelter center to use intake and case study forms. Forms required shall be developed by the department with consultation as outlined in Section 51.008 of this subtitle.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.006. Report

Prior to each regular session of the legislature, the department shall publish a report that summarizes reports from shelter centers under contract with the department and that analyzes the effectiveness of the contracts authorized by this chapter. The reports must include information on the expenditure of funds authorized under this chapter, the services provided, the number of persons for whom a service was provided, and any other information relating to the provision of family violence services. Copies of the report shall be submitted to the governor, the lieutenant governor, the speaker of the house of representatives,

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the Legislative Budget Board, the Senate Committee on Human Resources, and the House Committee on Human Services or their successor committees.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.007. Confidentiality

The department may not disclose any information gained through reports, collected case data, or inspections that would identify a particular center or a person working at or receiving services at a shelter center.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.008. Consultations

In implementing this chapter, the department shall consult with individuals and groups having knowledge of and experience in the problems of family violence.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

Cross References

Forms required of centers, development by department with consultation under this section, see § 51.005(c).

§ 51.009. Grants and Funds

The department may seek other funds that may be available for the contracts authorized by this chapter.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.010. Rules

The department may adopt rules necessary to implement this chapter.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, § 1, eff. Sept. 1, 1981.

§ 51.011. Funding

(a) In order to finance the program created by this chapter, the department is authorized to solicit and receive grants of money from either private or public sources, including appropriation by the legislature from the general revenue fund of the State of Texas, and in that regard it is hereby declared that the need for and importance of this program require priority and preferential consideration in appropriation.

(b) The department may utilize not more than six percent of the annual legislative appropriation to the family violence program for administration of this chapter and not more than six percent annually for the contracts described in Subsection (b) of Section 51.003 of this chapter.

Category		Citation
1.	Victim Compensation Program	
1.1	Responsible Agency	
1.2	Eligible Claimants	
1.3	Losses Covered	
1.4	Minimum and Maximum Award	
1.5	Required to Show Financial Need	
1.6	Required to Report Crime - Time Limit	
1.7	Filing of Claim - Time Limit	
1.8	Emergency Award	
1.9	Funding	
2.	Restitution	
2.1	Sentencing Option	41-25-1 et seq. (by offenders convicted of driving while intoxicated)
2.2	Mandatory Condition of Probation	77-18-1(5),(8)
2.3	Mandatory Condition of Parole	77-27-3(3),(4) (mandatory consideration)
2.4	Mandatory Sentence	76-3-201(3)(a) et seq.
2.5	Administration/Enforcement	76-3-201.1
3.	Escrow and Forfeiture of Offender Profits	
4.	Witness Fees	21-5-4; 21-5-10
5.	Victim's Bill of Rights	
6.	Protection from Intimidation	76-8-508
6.1	Crime Defined	
6.2	Protective Orders	
7.	Victim Notification	
7.1	of Compensation Program	
7.2	of Witness Fees	
7.3	of Final Disposition	
7.4	of Plea Agreement	
7.5	of Cancelled Proceeding	
7.6	of Right to Participate in Sentencing Hearing	
7.7	of Parole Hearing	77-27-3(1) (of parole hearing)
7.8	of Release of Offender	
7.9	of Escape of Offender	
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	
8.2	Written Statement at Sentencing Hearing	

Category		Citation
8.3	Testimony at Sentencing Hearing	
8.4	Written Statement at Parole Hearing	
8.5	Testimony at Parole Hearing	
8.6	Comment on Plea Bargain	
8.7	Participation in Other Proceedings	
9.	Employment Assistance	
9.1	Employer Intercession Services	
9.2	Criminal Sanction for Penalizing Employee-Witness	
10.	Return of Seized Property	77-24-1 et seq.
11.	Victim-Witness Assistance	
11.1	Ombudsmen	
11.2	Support Attendants	
11.3	Funding for Local Victim-Witness Groups	
12.	Elderly Victims	
12.1	Sentencing for Offenses Against Elderly	
12.2	Abuse, Neglect, Exploitation - Criminal Penalty	
12.3	Abuse, Neglect, Exploitation - Reporting	55-19-1, 55-19-2
12.4	Abuse, Neglect, Exploitation - Protective Services	55-19-4 et seq.
13.	Sexual Assault Victims	
13.1	Payment for Medical Services	76-3-409(2) (paid by offender who assaults minor)
13.2	Special Programs	
13.3	Child Sexual Assault Victim - Closed Proceedings	
13.4	Child Sexual Assault Victim - Admissible Depositions	76-5-411
14.	Domestic Violence	30-6-1 et seq.; 77-36-1 et seq.
14.1	Protective Orders	30-6-2 et seq.; 77-36-3 et seq.
14.2	Domestic Violence Shelters	
14.3	Domestic Violence Reporting	77-36-2(6),(7)
15.	Privacy and Security of Victim Information	
15.1	Statistical Information on Victims Maintained	
15.2	Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3	Confidentiality of Victim Information Held by Victim-Assistance Agencies	55-19-8 (abused elderly records)
15.4	Sexual Assault Counselor Privilege	78-3c-1 et seq.; 78-24-8(6)

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Utah Code Annotated

CHAPTER 25
VICTIM RESTITUTION

Section

- 41-25-1. Fee imposed against violator for victim restitution — Collection and deposit.
41-25-2. Judgment creditor's application for payment from victim restitution fund — Limit — Review board — Time for application.
41-25-3. Hearing on application — Showing by applicant.
41-25-4. Payments authorized by department.
41-25-5. Satisfaction of unpaid claims.
41-25-6. Subrogation rights of department.
41-25-7. Waiver of rights by noncompliance with chapter.

41-25-1. Fee imposed against violator for victim restitution — Collection and deposit. A fee of \$100 shall be imposed against each person who violates section 41-6-44, or an ordinance that complies with the requirements of subsection 41-6-43(1), or section 76-5-207, or a section establishing a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of those sections or ordinances, in addition to any fines and any other fees imposed, and shall be collected by the court and placed in the general fund. No monies other than those generated by the fees assessed under this section may be so expended and any amount appropriated for this purpose but not expended as authorized under this chapter shall lapse into the general fund.

History: C. 1953, 41-24-1, enacted by L. 1983, ch. 100, § 1.

Title of Act

An act relating to reimbursement of victims; providing that persons who have suffered uncompensated-for losses as a result of violation by another of any of certain criminal prohibitions involving alcohol or drugs

may make a claim on funds appropriated and administered by the department of public safety; providing for such appropriation; and providing for procedures to implement the act.

This act enacts chapter 24 [25] of Title 41, Utah Code Annotated 1953. — Laws 1983, ch. 100.

41-25-2. Judgment creditor's application for payment from victim restitution fund — Limit — Review board — Time for application. (1) If and when a person obtains against another person in a court of competent jurisdiction a final judgment in an action based on an occurrence in connection with which that other person was also convicted of a violation of section 41-6-44, or an ordinance that complies with the requirements of subsection 41-6-43(1), or section 76-5-207, or a section establishing a criminal prohibition that the person was charged with violating as a result of a plea bargain after having been originally charged with violating one or more of those sections or ordinances, that person who becomes the judgment creditor as a result of that final judgment may, after termination of all proceedings including appeals, related to the judgment and the conviction, file a verified application with the state department of public safety for a determination of that department directing payment from the victim restitution fund for the actual damages included in the judgment which exceed amounts recovered, if any, for losses incurred as a result of the occurrence, but not more than \$25,000. The department of public safety may establish a review board to consider applications filed under this section, and that department, directly or through the review board, may, with regard to an application, determine to pay and direct payment of any amount, not in excess of the \$25,000 limit, which in its discretion it considers appropriate in the circumstances. The department of public safety shall promulgate rules not

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inconsistent with this chapter to implement this chapter.

(2) No application may be filed in any fiscal year until after the effective date of any act appropriating money to the victim restitution fund for that fiscal year. An applicant must file the application referred to in subsection (1) within one year after the applicant becomes eligible to so file under subsection (1).

History: C. 1953, 41-24-2, enacted by L. 1983, ch. 100, § 1.

41-25-3. Hearing on application — Showing by applicant. (1) The department of public safety, directly or through a review board established under subsection 41-25-2(1), shall conduct a hearing on the petition within 90 days after the filing of the application. At the hearing the applicant must show:

(a) That he or she is not the spouse of the judgment debtor or the personal representative of the spouse of the judgment debtor;

(b) That he or she has complied with all applicable requirements of this chapter;

(c) That he or she has obtained the final judgment described in section 41-25-2, the amount awarded, and the amount owing at the date of the application;

(d) That he or she has had a writ of execution issued upon the judgment and that the officer executing the writ has made a return showing that no property of the judgment debtor subject to execution in satisfaction of the judgment could be found, and if execution is levied against the property of the judgment debtor, that the amount realized on the sale was insufficient to satisfy the judgment, and the amount realized from the sale and the balance remaining due on the judgment after application of the amount realized; and

(e) That he or she has made reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of property or other assets liable to be sold or applied in satisfaction of the judgment and that he or she has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.

(2) If the applicant satisfies the department of public safety, directly or through its review board, that it is not practicable to comply with one or more of the requirements enumerated in subsections (1)(d) or (1)(e) of this section, that department may waive those requirements.

History: C. 1953, 41-24-3, enacted by L. 1983, ch. 100, § 1.

41-25-4. Payments authorized by department. If the department of public safety, directly or through its review board, determines that a claim should be levied against the funds appropriated to the department, it shall direct payment from the funds appropriated to the department in accordance with its determination and the requirements of this chapter.

History: C. 1953, 41-24-4, enacted by L. 1983, ch. 100, § 1.

41-25-5. Satisfaction of unpaid claims. If the money appropriated to the department is insufficient to satisfy any claim for payment authorized by the department of public safety, directly or through its review board, that department shall, if and when sufficient money has been appropriated to the department, satisfy the unpaid claims in the order in which they were originally filed, together with accumulated interest at the rate of 8% per annum.

History: C. 1953, 41-24-5, enacted by L. 1983, ch. 100, § 1.

41-25-6. Subrogation rights of department. If the department of public safety, directly or through its review board, directs payment from the funds appro-

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priated to the department to a judgment creditor, and the payment is made, that department shall be subrogated to all the rights of the judgment creditor for the amounts paid out of the funds appropriated to the department, and any amount and interest recovered by that department shall be deposited in the general fund.

History: C. 1953, 41-24-6, enacted by L. 1983, ch. 100, § 1.

41-25-7. Waiver of rights by noncompliance with chapter. Failure of a person to comply with all of the applicable provisions of this chapter constitutes a waiver of any rights provided for under it.

History: C. 1953, 41-24-7, enacted by L. 1983, ch. 100, § 1.

* * *

CHAPTER 3

PUNISHMENTS

Part

2. Sentencing.

4. Limitations and special provisions on sentences.

PART 2

SENTENCING

Section	
76-3-201.	Sentences or combination of sentences allowed — Civil penalties — Restitution — Definitions — Aggravation or mitigation of crimes with mandatory sentences.
76-3-201.1.	Nonpayment of fine or restitution as contempt — Imprisonment — Relief where default not contempt — Collection of default.
76-3-201.2.	Civil action by victim for damages.
76-3-202.	Paroled persons — Termination or discharge from sentence — Time served on parole — Discretion of board of pardons.
76-3-203.	Felony conviction — Indeterminate term of imprisonment — Increase of sentence if firearm used.
76-3-207.	Capital felony — Sentencing proceeding.

76-3-201. Sentences or combination of sentences allowed — Civil penalties — Restitution — Definitions — Aggravation or mitigation of crimes with mandatory sentences. (1) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentences or combination of such sentences:

- To pay a fine; or
- To removal from and/or disqualification of public or private office; or
- To probation unless otherwise specifically provided by law; or
- To imprisonment; or
- To death.

(2) This chapter shall not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend, or cancel a license or permit removal of a person from office, cite for contempt, or impose any other civil penalty. A civil penalty may be included in a sentence.

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(3) (a) When a person is adjudged guilty of criminal activity which has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution up to double the amount of pecuniary damages to the victim or victims of the offense of which the defendant has pleaded guilty, is convicted, or to the victim of any other criminal conduct admitted by the defendant to the sentencing court unless the court in applying the criteria in section 3 (b) of this chapter, finds that restitution is inappropriate. If the court determines that restitution is appropriate or inappropriate, the court shall make the reasons for the decision a part of the court record its written order.

(b) In determining whether or not to order restitution, or restitution which is complete, partial or nominal, the court shall take into account:

(i) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;

(ii) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) The rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) Other circumstances which in the opinion of the court shall make restitution inappropriate.

(c) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall at the time of sentencing allow him a full hearing on such issue.

(4) As used in subsection (3) above:

(a) "Criminal activities" means any offense with respect to which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct;

(b) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as earnings and medical expenses;

(c) "Restitution" means full, partial or nominal payment for pecuniary damages to a victim, including insured damages;

(d) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities; "victim" shall not include any coparticipant in the defendant's criminal activities.

(5) If a statute under which the defendant was convicted mandates that one of three stated minimum terms must be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime. Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing. In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to section 76-3-404, and statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

(6) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(7) The court in determining a just sentence shall be guided by sentencing rules regarding aggravation and mitigation promulgated by the Utah Judicial Council.

(8) If a defendant subject to this section has been sentenced to be imprisoned in the state prison and has been committed to the custody of the division of corrections, the court may, within 120 days of the date of commitment on its own motion,

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or at any time upon the recommendation of the board of pardons, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he had not previously been sentenced, so long as the new sentence is no greater than the initial sentence. The resentencing provided for in this section shall comply with the sentencing rules of the Utah Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(9) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant as part of the sentence that if the defendant is released from prison, he or she may nonetheless be on parole for a period of ten years.

(10) If during the commission of a crime described as child kidnaping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the actor causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the actor, or found true by a judge or jury at trial, the actor shall, notwithstanding any other provision of law, be sentenced to the aggravated mandatory term in state prison.

History: C. 1953, 76-3-201, enacted by I. 1973, ch. 196, § 76-3-201; L. 1979, ch. 63, § 1; 1981, ch. 59, § 1; 1983, ch. 85, § 1; 1983, ch. 88, § 3.

Compiler's Notes.

The 1979 amendment added subsecs. (3) and (4) relating to restitution to victim.

The 1981 amendment substituted "court shall order" in the first sentence of subsec. (3)(a) for "court may order"; added "or victims * * * is inappropriate" to the first sentence of subd. (3)(a); added the second sen-

tence of subd. (3)(a); inserted "or not" and "or restitution" in subd. (3)(b); added subd. (3)(b)(iv); substituted "for which the defendant * * * committing the criminal conduct" in subd. (4)(a) for "admitted by the defendant"; inserted "earnings and" in subd. (4)(h); added "including insured damages" to subd. (4)(c); and made minor changes in phraseology and punctuation.

Law Reviews.

Utah Legislative Survey — 1979, 1980 Utah L. Rev. 155.

76-3-201.1. Nonpayment of fine or restitution as contempt — Imprisonment — Relief where default not contempt — Collection of default. (1) When a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court on motion of the county attorney, victim, or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.

(3) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

(4) The term of imprisonment for contempt for nonpayment of fines or failure to make restitution shall be set forth in the commitment order.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part.

A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The county attorney may collect restitution in behalf

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of a victim. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.

History: C. 1953, 76-3-201.1, enacted by L. 1979, ch. 69, § 2; L. 1983, ch. 262, § 3.

Title of Act.

An act amending section 76-3-201, Utah Code Annotated 1953, as enacted by chapter 196, Laws of Utah 1973, section 77-62-3, Utah Code Annotated 1953, as amended by chapter 199, Laws of Utah 1975, and section 77-35-17, Utah Code Annotated 1953, as amended by

chapter 268, Laws of Utah 1977, and enacting sections 76-3-201.1 and 76-3-201.2, Utah Code Annotated 1953; relating to restitution; providing standards for courts when ordering restitution as part of sentence; providing procedure for non-payment; providing for preservation of injured party rights; providing for restitution to be part of probation; and providing that board of pardons may authorize restitution. — Laws 1979, ch. 69.

* * *

CHAPTER 18

THE JUDGMENT

Section

- 77-18-1. Suspension of sentence — Probation — Period — Conditions — Restitution — Revocation.
77-18-5.5. Judgment of death — Defendant to select firing squad or lethal injection.
77-18-6. Judgment to pay fine or restitution constitutes a lien.

77-18-1. Suspension of sentence — Probation — Period — Conditions — Restitution — Revocation. (1) On a plea of guilty or no contest or conviction of any crime or offense, if it appears compatible with the public interest, the court may suspend the imposition or execution of sentence and place the defendant on probation for such period of time as it determines. The legal custody of all probationers is vested in the court having jurisdiction of the offender and the chief agent of the adult probation and parole section of the state division of corrections. In cases that do not involve an indeterminate sentence, the period of probation may exceed the length of time of the maximum sentence that could be imposed.

(2) Prior to imposition of any sentence for an offense for which probation may be granted, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a pre-sentence report on the defendant. The report shall be prepared by the department of adult probation and parole. The report shall include a specific statement of pecuniary damages, accompanied by a recommendation from adult probation and parole regarding the payment of restitution by the defendant. The contents of the report shall be confidential. The court may disclose all or parts of the report to the defendant or his counsel as the interest of justice requires. At the time of sentence, the court shall hear any testimony or information the defendant or the prosecuting attorney may wish to present concerning the appropriate sentence. Such testimony or information shall be presented in open court on record and in the presence of the defendant.

(3) After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal or once in jeopardy, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment in accordance with Rule 22, Utah Rules of Criminal Procedure. Whenever possible, in all offenses involving damage to persons or property, the pre-sentence report of the defendant shall be made available to the court prior to the pronouncement of judgment.

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(4) After a hearing, the court may increase or decrease the probation period and may revoke or modify any condition of probation. While on probation, and as a condition thereof, the defendant may be required to pay:

(a) Pay, in one or several sums, any fine imposed at the time of being placed on probation;

While on probation and as a condition thereof, the defendant shall be required to make restitution or reparation to the victim or victims as defined in 76-3-201 (4) for pecuniary damages as provided in section 76-3-201 caused by the offense to which the defendant has pleaded guilty, no contest, or for which a conviction was had or by any other criminal conduct admitted by the defendant to the sentencing court, unless the court in applying the criteria stated in 76-3-201 (3) finds that restitution is inappropriate. If the court determines that restitution is inappropriate, the court shall state for the court record the reasons for the decision.

(b) The defendant may be required to pay Pay amounts required under provisions of section 77-32a-1 through 77-32a-14;

(c) He may also be required to provide Provide for the support of others for whose support he is legally liable, to participate;

(d) Participate in available rehabilitation programs as may be available, and to serve;

(e) Serve a period of time in the county jail not to exceed one year; provided, however, that the State of Utah shall reimburse any county for the actual costs of incarceration of a convicted felon sentenced to serve in a county jail as a condition of probation.

(f) Serve a term of home confinement. The court may impose all or part of the costs of supervision as a condition of home confinement.

(5) While on probation and as a condition thereof, the defendant shall be required to make restitution or reparation to the victim or victims as defined in section 76-3-201 (4) for pecuniary damages as provided in section 76-3-201 caused by the offense to which the defendant has pleaded guilty, no contest, or for which a conviction was had or by any other criminal conduct admitted by the defendant to the sentencing court, unless the court in applying the criteria stated in section 76-3-201 (3) finds that restitution is inappropriate. If the court determines that restitution is inappropriate, the court shall include as part of its written order the reasons for the decision.

(6) The prosecutor shall provide notice of the restitution order to the clerk of the court. The clerk shall place the order on the civil docket and shall provide notice of the order to the parties. The order shall be treated as a legal judgment under which the victim may seek civil remedy.

(5) (7) (a) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court which authorized probation shall determine whether the affidavit establishes probable cause to believe that revocation or modification of probation may be justified. If the court determines that there is probable cause, it shall cause to be served on the defendant a copy of the affidavit and an order to show cause why his probation should not be revoked or modified.

(c) The order to show cause shall specify a time and place for the hearing, which shall be within seven days of the service upon the defendant unless he shows good cause for a continuance, and shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed for him if he is indigent. The order shall also inform the defendant of a right to present evidence as provided in the Utah Rules of Civil Procedure.

(d) At the hearing, the defendant shall admit or deny the allegations of the affidavit. If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations, which need not be evidence admissible in a trial. The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning

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by the defendant unless the court for good cause otherwise orders. The defendant may call witnesses, appear and speak in his own behalf, and present evidence.

(e) After hearing, the court shall make findings of fact. Upon determining that the defendant violated the conditions of probation, the court may order the probation revoked, modified or continued. If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(8) Restitution shall be imposed unless upon a hearing in court a finding is made that restitution is inappropriate pursuant to subsection 76-3-201 (3) (b) or the defendant objects to its imposition pursuant to subsection 76-3-201 (3) (c).

(9) Restitution imposed under this chapter is considered a debt for "willful and malicious injury" for purposes of exceptions listed to discharge in bankruptcy as provided in Title 11, Section 523, U.S.C.A.

History: C. 1953, 77-18-1, enacted by L. 1980, ch. 15, § 2; L. 1981, ch. 59, § 2; 1982, ch. 9, § 1; 1983, ch. 47, § 1; 1983, ch. 68, § 1; 1983, ch. 85, § 2.

77-18-6. Judgment to pay fine or restitution constitutes a lien. A judgment which orders the payment of a fine or payment of restitution to a victim pursuant to section 76-3-201, constitutes a lien when recorded in the judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action.

History: C. 1953, 77-18-6, enacted by L. 1980, ch. 15, § 2; L. 1983, ch. 262, § 4.

77-27-3. Duties of board — Notices of hearings — Decisions final — Governor's power — Restitution as condition. (1) The board of pardons shall determine, by majority decision, when and under what conditions, subject to the provisions of this chapter, persons now or hereafter serving sentences, in all cases except treason or impeachments, or as otherwise limited by law, may be released upon parole, pardoned, or have their fines or forfeitures remitted, or their sentences commuted or terminated. No fine or forfeiture shall be remitted, no parole, pardon or commutation granted or sentence terminated, except after a full hearing before the board in open session and after appropriate prior notice to the defendant of the time and place of the hearing has been given to the defendant and the county attorney, and the county attorney has given notice of the time and place of the hearing to the sentencing court and law enforcement officials responsible for the prisoner's arrest and conviction. If a sentence for a sexual offense, kidnapping, murder, or aggravated assault is involved, the county attorney and law enforcement officials shall when possible notify the victim or the victim's family of the hearing. The orders and decisions of the board of pardons and any dissent thereto shall be reduced to writing.

(2) The determinations and decisions of the board of pardons in cases involving approval or denial of any action whatsoever, of paroles, pardons, commutations or terminations of sentence, or remission of fines and forfeitures shall be final.

(3) Nothing herein shall be construed as a denial of or limitation on the governor's power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment; however, such respites or reprieves shall not extend beyond the next session of the board of pardons and the board, at such session, shall continue or determine such respite or reprieve, or it may commute the punishment, or pardon the offense as herein provided. In the case of conviction for treason, the governor has the power to suspend execution of the sentence, until the case shall be reported to the legislature at its next session, when the legislature shall either pardon or commute the sentence, or direct its execution.

In determining when and where and under what conditions persons now or hereafter serving sentences may be released upon parole, pardoned or have their fines

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or forfeitures remitted, or their sentences commuted or terminated, the state board of pardons shall consider whether such persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of section 76-3-201, as a condition of any parole, pardon, remission of fines or forfeitures, commutation or termination of sentence.

If the state board of pardons determines that restitution is inappropriate, the state board of pardons shall state in writing as a part of the record of proceedings, the reasons for the decision.

(4) Whenever the state board of pardons orders the release on parole of an inmate who has been sentenced to make restitution pursuant to section 76-3-201, but with respect to whom payment of all or a portion of the restitution was suspended until his release from imprisonment, the board may establish a schedule by which payment of the restitution may be resumed. In fixing the schedule and supervising the paroled inmate's performance thereunder the board may consider the factors specified in section 76-3-201(3). The board may provide to the sentencing court a copy of the schedule and any modifications thereof.

* * *

21-5-4. Witness fees and mileage. Every witness legally required or in good faith requested to attend upon a city or district court or a grand jury is entitled to \$14 per day for each day in attendance and 30 cents for each mile actually and necessarily traveled in going only; provided, that in case of a witness's attending from without the state in a civil case, mileage for such witness shall be allowed and taxed for the distance actually and necessarily traveled within the state in going only.

History: R.S. 1898 & C.L. 1907, § 994; L. 1911, ch. 9, § 1; C.L. 1917, § 2545; L. 1925, ch. 96, § 1; R.S. 1933, 28-5-4; L. 1937, ch. 30, § 1; C. 1943, 28-5-4; L. 1951, ch. 41, § 1; 1977, ch. 98, § 1.

Compiler's Notes.

The 1977 amendment increased witnesses' fees from \$6 to \$14 per day and mileage allowances from 20 cents to 30 cents per mile.

Witness fees.

Taxing defendant with witness fees in excess of those provided for by statute was unwarranted even though the fees represented the actual expense incurred. *Frampton v. Wilson* (1980) 605 P 2d 771.

21-5-10. Witness fees in justice courts. Every witness legally required or in good faith requested to attend upon a justice's court or inquest is entitled to \$10 per day for each day's attendance, and 30 cents for each mile actually and necessarily traveled, in going only; provided, that in case of a witness's attending from without the state, mileage for such witness shall be allowed and taxed for the distance actually and necessarily traveled within the state, in going only.

* * *

76-8-508. Tampering with witness—Retaliation against witness or informant—Bribery.—A person is guilty of a felony of the third degree if:

(1) Believing that an official proceeding or investigation is pending or

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about to be instituted, he attempts to induce or otherwise cause a person to:

- (a) Testify or inform falsely; or
- (b) Withhold any testimony, information, document, or thing; or
- (c) Elude legal process summoning him to provide evidence; or
- (d) Absent himself from any proceeding or investigation to which he has been summoned; or

(2) He commits any unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or

(3) He solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the things specified in paragraph (1).

History: C. 1953, 76-8-508, enacted by L. 1973, ch. 196, § 76-8-508. 11 C.J.S. Bribery § 2. 12 Am. Jur. 2d 749, Bribery § 3.

Cross-References.

Accepting bribe, or bribery, to prevent criminal prosecution, 76-8-308.

Collateral References.

Bribery—1(1).

Admissibility, in prosecution for bribery or accepting bribes, of evidence tending to show the commission of other bribery or acceptance of bribe, 20 A. L. R. 2d 1012.

CHAPTER 24

DISPOSAL OF PROPERTY RECEIVED BY PEACE OFFICER

Section

- 77-24-1. Safekeeping by officer pending disposition — Records required.
- 77-24-2. Return of property not needed as evidence — Procedure.
- 77-24-3. Receipt from owner of returned property.
- 77-24-4. Sale of unclaimed property — Disposition of proceeds.
- 77-24-5. Property seized from person — Duplicate receipts.

77-24-1. Safekeeping by officer pending disposition — Records required. When personal property comes into the possession of a peace officer either in execution of a search warrant, or pursuant to an arrest of a person with or without warrant, or is received or taken by him as evidence in connection with any public offense, he shall hold it in safe custody until it is received into evidence or, if it is not used as evidence, until it can be disposed of as provided in this chapter. While in the custody of such peace officer a proper record shall be maintained reflecting the ownership of the property, if known, and the case or cases for which it was taken or received and is being held.

77-24-2. Return of property not needed as evidence — Procedure. Property so obtained which is not needed as evidence shall be returned to the owner if he may lawfully possess it. When the peace officer or the agency by which he is employed becomes aware that the property is not needed the prosecuting attorney shall be so advised, giving a description and details of ownership. When the prosecuting attorney, by such notice

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or otherwise, becomes aware that the property is not needed he shall give written notice to the owner. Upon proof of ownership and of lawfulness of possession satisfactory to the prosecuting attorney, the prosecuting attorney shall give the owner written authorization which shall entitle the owner to receive the property from the person having custody of it. When property so obtained is received in evidence, it shall be retained by the clerk of the court last receiving it or shall be returned by him to the custody of the peace officer until all direct appeals and retrials are final, at which time the property shall be returned in accordance with this section. In the event that the prosecuting attorney considers it necessary to retain control over the evidence, in anticipation of possible collateral attacks upon the judgment or of use in some potential prosecution, he may decline to authorize return.

History: C. 1953, 77-24-2, enacted by L. 1980, ch. 15, § 2. Collateral References. Criminal Law — 1221. 24B CJS Criminal Law § 2004.

77-24-3. Receipt from owner of returned property. Whenever property is returned to the owner, a receipt shall be taken from him listing in detail the property returned. The receipt shall be retained as a permanent record in the files of the agency involved or the court where the case is finally resolved.

History: C. 1953, 77-24-3, enacted by L. 1980, ch. 15, § 2. Collateral References. Criminal Law — 1221. 24B CJS Criminal Law § 2004.

77-24-4. Sale of unclaimed property — Disposition of proceeds. If the property is not claimed by the owner before the expiration of three months from the receipt of notice, or if the owner is unknown and no claim of ownership has been made, the clerk or peace officer or the agency having possession of the property shall sell it at public auction, as provided by law for the sale of personal property on execution, and with the proceeds pay:

- (1) The necessary expenses incurred in the preservation of such property and its sale; and
- (2) Any balance to the state treasurer under the provisions of 78-44-8, 78-44-11 and 78-44-13.

77-24-5. Property seized from person — Duplicate receipts. When money or other property is seized with or without a warrant, the peace officer seizing it shall at the time deliver a receipt to the person from whom it is taken and file a duplicate in the office of the agency employing the officer. If the custody of the property is transferred to another police agency or the property is placed in evidence, a copy of the receipt shall accompany it until disposition of the property is made in accordance with the provisions of this chapter.

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CHAPTER 19

ADULT PROTECTIVE SERVICES

Section	
55-19-1.	Definitions.
55-19-2.	Report of abuse of disabled adult required — Investigation — Criminal classification — Exemption.
55-19-3.	Division to develop plan — Rules and regulations.
55-19-4.	Protective services — No course except by court order — Rights of persons protected — Responsibility for costs.
55-19-5.	Petition by agency in absence of consent by disabled adult — Services authorized by court — Review.
55-19-5.5.	Emergency order authorizing protective services — Findings required — Contents required — Termination — Implementation.
55-19-5.6.	Petition for emergency order — Affidavit — Notice — Hearing — Petition for modification — Reports to court — Continuation of services.
55-19-5.7.	Peace officer transporting disabled person to care facility — Grounds — Time for notice, petition, hearing and decision.
55-19-6.	Petition by agency when caretaker refuses to allow services — Contents — Injunction.
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55-19-8.	Records confidential — Exceptions.
55-19-9.	Repealed.
55-19-10.	Enforcement by agency — County attorney's duties.

55-19-1. Definitions. As used in this act:

(1) "Disabled adult" means any person 18 years of age or older who is incapacitated due to mental retardation, cerebral palsy, epilepsy or other neurological conditions; the infirmities of aging or other like incapacities due to accidents, mental or physical disability; and whose condition prevents the adult from providing his own care and protection impaired because of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, the infirmities of aging, or other cause to the extent that he or she is unable to care for his or her own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(2) "Protective services" means those services including those defined under guardian and conservator in the Utah Uniform Probate Code furnished by the division protective services agency to assist persons in need of protection to prevent or cause discontinuance of abuse, neglect, or exploitation until the condition no longer requires intervention consistent, if at all possible, to the preferred accustomed life styles of the adult.

(3) "Protective services agency" means the division of family services department of social services, division of aging and adult services, or any agency obligated by contract to provide adult protective services for the department.

(4) "Protected person" means a person disabled adult for whom the court has ordered protective services and includes disabled adults for whom emergency protective services are established under the provisions of this chapter.

(5) "Abuse" means physical injury, unreasonable confinement and, or deprivation of life sustaining treatment.

(6) "Neglect" means failure by a caretaker to provide habilitation, care, nutrition, clothing, shelter supervision, medical care, or failure by the disabled adult to provide the above services for themselves.

(7) "Exploitation" means the unjust or improper use of a disabled adult or his resources for profit or advantage.

(8) "Public guardian" means the director of the division of family services and his representatives in each district in the State of Utah.

(9) (8) "Counsel" means an attorney who is duly licensed to practice in the State of Utah.

(9) "Department" means the department of social services.

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(10) "Division" means the division of family services aging and adult services.

(11) "Director" means the director of the division of family services department of social services.

(12) "Caretaker" means any person, corporation or public institution that has assumed by relationship, contract, or court order the responsibility to provide food, shelter, clothing, medical and other life sustaining necessities to an a disabled adult unable to care for himself.

(13) "Emergency" means that a disabled adult is at risk of death or immediate and serious harm to himself or others.

History: L. 1977, ch. 210, § 1; 1983, ch. 245, § 1. of family services to implement these services. — Laws 1977, ch. 210.

Title of Act.

An act providing for protective services for incapacitated adults; providing procedures for placement; and providing for the division

Law Reviews.

In re Boyer: Guardianship of Incapacitated Adults in Utah, 1982 Utah L. Rev. 427.

55-19-2. Report of abuse of disabled adult required — Investigation — Criminal classification — Exemption. (1) Any person including, but not limited to any social worker, physician, psychologist, nurse, teacher, employee of a private or public facility serving adults, who has a reason to believe that any disabled adult has been subject to abuse, neglect or exploitation shall report or cause reports to be made to the local police or county sheriff. Anyone who in good faith, makes such a report shall be immune from civil liability immediately notify the nearest peace officer, law enforcement agency, or protective services agency.

(2) Anyone who in good faith makes such a report shall be immune from civil liability in connection with the report.

(3) When the initial report is made to a peace officer or law enforcement agency, such officer or agency shall immediately notify the nearest protective services agency and the agency shall initiate protective service procedures as provided in this chapter. When the initial report is made to the protective services agency and it appears that the abuse, neglect, or exploitation has caused serious injury or a serious imposition on the rights of the disabled adult, the agency shall immediately notify the local law enforcement agency which shall initiate an investigation and in cooperation with the protective services agency initiate appropriate protective service procedures.

(4) Any person required to report a suspected case of a disabled adult being abused, neglected, or exploited, who willfully fails to do so, is guilty of a class B misdemeanor.

(2) (5) Any person who abuses, neglects or exploits a disabled adult is guilty of a third degree felony.

(6) An elderly person who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof shall, for this reason alone, not be considered a disabled adult.

History: L. 1977, ch. 210, § 2; 1983, ch. 245, § 2.

55-19-3. Division to develop plan — Rules and regulations. The division shall develop a plan for a coordinated protective services program consistent with this act, with the goal of ensuring that every person in need of protection will have easy access to those services. The division shall adopt and promulgate rules and regulations necessary to fully effect the content and purposes of this act which shall include:

(1) Procedures for the operation of a protective service program.

(2) Guidelines for the initiation of guardianship protective proceedings, and referral to the public guardian including guardianship and conservatorship.

(3) The designation of facilities appropriate for protective placement.

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55-19-4. Protective services — No course except by court order — Rights of persons protected — Responsibility for costs. (1) The division protective services agency shall furnish as funded by the legislature protective services in response to requests for assistance from or on behalf of persons to be protected, or when the court orders such service in accordance with this section and sections 55-19-5, 55-19-5.5, 55-19-6, and 55-19-7.

(2) Persons to be protected shall receive protective services without coercion unless ordered by the court.

(3) Costs incurred during court proceedings including in providing protective services are the responsibility of the division of family services protective services agency unless:

(a) The disabled adult to be protected is eligible for such services from another governmental agency; or

(b) The disabled adult to be protected is financially able to pay for such services according to rates established by the department pursuant to the Administrative Rule-making Act and that the payment is provided for as part of the written agreement for services called for in subsection (5)(c); or

(c) The court appoints a guardian and orders that such costs be paid from the disabled adult's estate.

(4) Nothing herein shall relieve the protective services agency from providing protective services unless other services are actually available to the disabled adult.

(5) Whenever protective services are furnished to a disabled adult:

(a) Who requests or knowingly and voluntarily consents to receive such services;

(b) Who knowingly and voluntarily waives the right to a hearing or evidentiary finding of facts; or

(c) Who has either received competent counsel or who knowingly and voluntarily waives the right to counsel, the same shall be provided without court order only after review by the protective services agency. A written agreement between the protective services agency and the recipient setting forth the purposes and limitations of the services to be provided shall be executed. If consent to protective services is subsequently withdrawn by the subject adult, services shall cease under this subsection.

(6) Involuntary protective services may be provided to non-consenting disabled adults under this chapter pursuant to the order of a court.

(7) Whenever protective services are furnished under this act subsection pursuant to court order, the person protected shall have or receiving such services has the following rights prior to the provision of services:

(a) Personal service of a copy of the petition for protective services, which shall comply with section 55-19-5.

(b) The right to a hearing before a district court to which not less than 10 days' notice of the contents of the petition, the rights set forth in this section, and the possible consequences of the hearing has been given informing to the person to be protected and all reasonably ascertainable persons and agencies having some responsibility for his welfare, and the public guardian of the person or persons who petitioned for the hearing, the full contents of the petition, the rights set out in this section, and all possible consequences of the hearing to be protected.

(c) The right to be present at the hearing unless a duly licensed physician, who is not the petitioner or an agent of the petitioner, certifies that the person to be protected is physically unable to attend, in which case the court shall appoint a court investigator to personally interview the person to be protected and determine his desires concerning the hearing or unless the subject adult has knowingly and voluntarily waived the right to be present. Waiver shall not be presumed for non-appearance, but shall be determined at the hearing on the basis of factual information supplied to the court.

(d) The right to counsel at and in preparation of the hearing and at every significant stage of the protective service. If he a disabled adult is unable to afford counsel, the court shall appoint a counsel as guardian ad litem, who shall be paid

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by the division of family services protective services agency in accordance with subsection (3) above.

(e) The right to offer evidence on his behalf, to compel the attendance of witnesses, and to confront and cross-examine adverse witnesses and the right to a written statement setting forth the reasons for and conditions of any protective order.

(f) The right to the least possible restriction on his civil rights, consistent with his welfare and safety; after medical, social, and psychological assessments have been made.

(g) This section shall not limit specific procedures under title Title 75, or under the protective placement process described in section 55-19-6, designed to safeguard the best interests of the person to be protected.

History: L. 1977, ch. 210, § 4; 1983, ch. 245, § 4.

55-19-5. Petition by agency in absence of consent by disabled adult — Services authorized by court — Review. (1) If a disabled adult fails to consent to the receipt of adult protective services or if his consent is withdrawn or the division protective services agency determines that the adult lacks the capacity to consent, it may petition the district court for authorization to provide protective services. The petition shall contain:

(a) Specific facts sufficient to show that the adult is disabled and in need of protective services as defined in this chapter.

(b) Specific facts sufficient to show the disabled adult lacks the capacity to consent or has failed or refused to consent.

(c) At least ten 10 days' notice of the hearing on the petition.

(d) A statement of the disabled adult's rights as specified under section subsection 55-19-4 (7).

(2) If the court finds by clear and convincing evidence that the disabled adult lacks the capacity to consent and is in need of protective services, it shall issue a decree authorizing the provision of protective services by the division protective services agency which decree shall specifically state the purpose, extent and limitations thereof, including specific findings of fact and conclusions of law.

(3) Any party to the proceedings may move the trial court for a review modification or dissolution of the decree of the court at any time upon a showing of substantial change in circumstances. Any person for whom protective services are ordered has the right to petition the court for a rehearing within 10 days from the date the order was entered.

History: L. 1977, ch. 210, § 5; 1983, ch. 245, § 5.

55-19-5.5. Emergency order authorizing protective services — Findings required — Contents required — Termination — Implementation. (1) Upon petition by the protective services agency or another interested party a district court may issue an order authorizing the provision of protective services on an emergency basis upon finding:

(a) The protected person is a disabled adult;

(b) An emergency situation exists; and

(c) The protected person does not have a guardian authorized by law to act on his behalf or his guardian has failed or refused to act.

(2) In issuing an emergency order, the court shall order only those protective services necessary to remove the conditions creating the emergency and shall specifically designate in its order the approved services together with supporting facts.

(3) Protective services authorized by an emergency order shall not include hospitalization, nursing or custodial care, or a change of residence unless the court specifically finds that the action is necessary and approves such action in its order.

(4) Protective services shall be provided through an emergency order for a period not to exceed 72 hours, at which time the order shall terminate unless a

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petition for guardianship, conservatorship, or other protective services has been initiated. If such a petition is made, the emergency order may be continued for as long as 10 days to allow a hearing to be held to determine whether the order shall remain in effect.

(5) In its emergency order the court shall appoint the petitioner, or another interested person as guardian, as defined in subsection 75-1-201 (16), who shall have responsibility for the person's welfare and authority to give consent for the approved protective services until the expiration of the order.

(6) The issuance of an emergency order and the appointment of a guardian until the expiration of the order shall not deprive the protected person of any rights except to the extent provided for in the order or appointment.

(7) To implement an emergency order, the court may authorize forcible entry by a law enforcement officer of the premises where the protected person is residing for the purpose of rendering protective services or transporting the person to another location for the provision of such services only after a showing to the court that voluntary access to the premises is not possible and forcible entry is required.

History: C. 1953, 55-19-5.5, enacted by L. 1983, ch. 245, § 6.

Title of Act.

An act relating to public welfare; establishing protective procedures for in capacitated adults; establishing procedures for general placement and emergency placement; requiring the county attorney to represent the protective services agency in the enforcement of this act; and establishing a

penalty for failure to report the situation of a disabled adult where duty to report exists.

This act amends sections 55-19-1, 55-19-2, 55-19-3, 55-19-4, 55-19-5, 55-19-6, 55-19-7, and 55-19-8, Utah Code Annotated 1953, as enacted by chapter 210, Laws of Utah 1977; enacts sections 55-19-5.5, 55-19-5.6, 55-19-5.7, and 55-19-10, Utah Code Annotated 1953; and repeals section 55-19-9, Utah Code Annotated 1953, as enacted by chapter 210, Laws of Utah 1977. — Laws 1983, ch. 245.

55-19-5.6. Petition for emergency order — Affidavit — Notice — Hearing — Petition for modification — Reports to court — Continuation of services.

(1) The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age, and address of the person in need of protective services; the nature of the emergency; the nature of the person's disability, if determinable; the proposed protective services, the petitioner's affidavit as to the existence of facts showing petitioner's attempts to obtain the protected person's consent to the services and the outcome of such attempts.

(2) Notice of the filing of such petition, and other relevant information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, the rights of the person in the court proceeding, and the consequences of a court order, shall be given to the person and his spouse if he is married, or to his adult children, or next of kin, and his guardian if one has been appointed. Notice shall be given at least 24 hours prior to the hearing for emergency intervention. The court may waive the 24-hour notice requirement upon a showing that:

(a) Immediate and reasonably foreseeable physical harm to the person or others will result from a 24-hour delay; and

(b) Reasonable attempts have been made to notify the protected person, his spouse, if he is married, his adult children or next of kin, and his guardian, if one has been appointed. Notice of the court's final order shall also be given to the above named parties.

(3) Upon receipt of a petition for an emergency order for protective services, the court shall hold a hearing after the 24-hour notice required by subsection (2)(b) above has been given, unless such notice has been waived by the court.

(4) The protected person, the temporary guardian or any interested person may petition the court to have the emergency order set aside or modified at any time, notwithstanding any prior findings by the court that the protected person is disabled.

(5) Where protective services are rendered on the basis of an emergency order, the temporary guardian shall submit a report to the court describing the circum-

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stances including the name of the protected person, place, date, and nature of the services, and the access to the person whether voluntary or by forcible entry. This report shall become part of the court record.

(6) If the person requires continued protective services after a renewal order has expired the temporary guardian shall immediately petition the court for an order as described in section 55-19-5. The petitioner shall, acting in good faith, be immune from civil liability for filing a petition as provided herein.

History: C. 1953, 59-19-5.6, enacted by L. 1983, ch. 245, § 7.

55-19-5.7. Peace officer transporting disabled person to care facility — Grounds — Time for notice, petition, hearing and decision. Notwithstanding the emergency procedures set forth in sections 55-19-5.5 and 55-19-5.6, when a peace officer has probable cause to believe from personal observation that a disabled person: (1) will suffer immediate and irreparable physical injury or death if not immediately placed in a substitute care facility; and (2) is incapable of giving consent; and it is not possible to follow the procedures defined in this section, the peace officer may transport the disabled person to an appropriate substitute care facility. The protective services agency and the persons entitled to notice pursuant to this chapter shall be notified of such detention within four hours. The protective services agency shall file a petition pursuant to section 55-19-5.6 within 24 hours, not including Saturdays, Sundays, and legal holidays, after the transfer of the disabled person has occurred. The court shall hold a hearing on this petition and render its decision within 48 hours after the transfer of the disabled person.

History: C. 1953, 59-19-5.7, enacted by L. 1983, ch. 245, § 8.

55-19-6. Petition by agency when caretaker refuses to allow services — Contents — Injunction. (1) When a disabled adult is in need of protective services and the caretaker refuses to allow the provision of such services, the division protective services agency may petition the court for a decree enjoining injunctive relief prohibiting the caretaker from interfering with the provision of protective services.

(2) The petition must allege facts sufficient to show that the disabled adult is in need of protective services and either consents or lacks the capacity to consent and that the caretaker refuses to allow the provision of protective services or order other appropriate relief.

(3) If the court finds the allegations to be true, it may enjoin The court may on appropriate findings and conclusions in accordance with Rule 64A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.

History: L. 1977, ch. 210, § 6; 1983, ch. 245, § 9.

55-19-7. Director as trustee, receiver, custodian, or guardian. The director of the division of family services protective services agency or his delegate is authorized to act, and may be appointed by the court, as trustee, receiver, custodian, or guardian over the person or estate or both to prevent or cause discontinuance of abuse, neglect or exploitation pursuant to title Title 7, chapter Chapter 13, and pertinent provisions of the Utah Uniform Probate Code.

History: L. 1977, ch. 210, § 7; 1983, ch. 245, § 10.

55-19-8. Records confidential — Exceptions. Any records of the division or other agency or the court, pertaining to a person to be protected or a protected person under this act, are not open to public inspection. Information contained in such records may not be disclosed publicly in such a manner as to identify individu-

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als, but the records shall be available for good cause shown and when it is in the best interest of the person or his family.

The attorney representing the disabled adult shall have access to all records which are necessary for the attorney's representation of the disabled adult.

History: L. 1977, ch. 210, § 8; 1983, ch. 245, § 11.

55-19-9. Repealed.

Repeal.

Section 55-19-9 (L. 1977, ch. 210, § 9), relating to confidentiality of records of the division, was repealed by Laws 1983, ch. 245, § 13.

55-19-10. Enforcement by agency — County attorney's duties. (1) The protective services agency may take such action as may be necessary to enforce the provisions of this act. It shall be the duty of the county attorney to represent the protective services agency in any such action.

(2) In the event the county attorney shall fail to act upon the request of the protective services agency within 30 days of the request, the protective services agency may request the attorney general to act and in his discretion he may assume the responsibilities and carry the action forward in place of the county attorney.

(3) The protective services agency, upon receiving report of a disabled adult who is the victim of abuse, neglect, or exploitation, shall notify the county attorney who may initiate legal proceedings and take such action as necessary to prosecute the alleged offender.

History: C. 1953, 55-19-10, enacted by L. 1983, ch. 245, § 12.

Repealing Clause.

Section 13 of Laws 1983, ch. 245 provided: "Section 55-19-9, Utah Code Annotated 1953, as enacted by Chapter 210, Laws of Utah 1977, is repealed."

* * *

76-3-409. Child abuse or sex offense against child — Treatment of offender or victim — Payment of costs. (1) Any person convicted in the district court of child abuse, or a sexual offense if the victim is under 18 years of age, may be ordered to participate in treatment or therapy under the supervision of adult probation and parole, in cooperation with the division of children, youth and families until the court is satisfied that such treatment or therapy has been successful or that no further benefit to the convicted offender would result if such treatment or therapy were continued. The court may also order treatment of the victim if it believes the same would be beneficial under the circumstances. Nothing in this section shall preclude the court from imposing any additional sentence as provided by law.

(2) The convicted offender shall be ordered to pay, to the extent that he or she is able, the costs of his or her treatment, together with treatment costs incurred by the victim and any administrative costs incurred by the appropriate state agency in the supervision of such treatment. If the convicted offender is unable to pay all or part of the costs of treatment, the court may order the appropriate state agency to pay such costs to the extent funding is provided by the legislature for such purpose and shall order the convicted offender to perform public service work as compensation for the cost of treatment.

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76-5-410. Child victim of sex offense as competent witness. Notwithstanding any other provision of law or rule of evidence, a child victim of sexual abuse, under the age of ten, shall be considered a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall be permitted to determine the weight and credibility to be given to the testimony.

History: C. 1953, 76-5-410, enacted by L. 1983, ch. 88, § 29.

76-5-411. Admissibility of out of court statement of child victim of sex offense. (1) Notwithstanding any other provision of law or rule of evidence, a child victim's out of court statement regarding sexual abuse of the child is admissible into evidence though it does not qualify under an existing hearsay exception, so long as: (1) the child testifies; or (2) in the event the child does not testify, there is other corroborative evidence of the abuse. Before admitting such a statement into evidence, the judge shall determine whether the general purposes of the evidence are such that the interest of justice will best be served by admission of the statement into evidence. In addition, the court shall consider the age and maturity of the child, the nature and duration of the abuse, the relationship of the child to the offender, the reliability of the assertion, and the reliability of the child witness, in deciding whether to admit such a statement.

(2) A statement may be admitted under this exception only if the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with an opportunity to prepare to meet it, his intention in offering the statement, and the particulars of it.

(3) For purposes of this section, a child is a person under the age of ten.

* * *

CHAPTER 6

SPOUSE ABUSE ACT

- | | |
|----------|---|
| Section | Definitions. |
| 30-6-1. | Abuse or danger of abuse — Complaint and protective orders authorized. |
| 30-6-2. | Venue of action. |
| 30-6-3. | Assistance by county clerk and county attorney. |
| 30-6-4. | Hearing upon verified complaint — Withdrawal of complaint — Ex parte orders — Contents — Service — Title to real property not affected. |
| 30-6-5. | Protective orders — Contents — Ex parte orders not to affect certain rights. |
| 30-6-6. | Proceedings independent from other actions. |
| 30-6-7. | Peace officers — Notification and enforcement of orders — Prevention of abuse in absence of order — Limitation on liability. |
| 30-6-8. | Department to provide comprehensive support services. |
| 30-6-9. | Standardization of forms. |
| 30-6-10. | |

30-6-1. Definitions. As used in this act:

(1) "Abuse" means the occurrence of any of the following acts between adult family members:

(a) Attempting to cause, or intentionally or knowingly causing, physical harm;

(b) Intentionally placing another in fear of imminent physical harm;

(2) "Adult" means a person who has attained majority;

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(3) "Adult family member" means a person presently, or formerly, a spouse or living as a spouse, or any adult residing, or having resided, within the same residence;

(4) "Department" means the department of social services;

(5) "Good cause" means the occurrence of abuse or a substantial likelihood of immediate danger of abuse;

(6) "Law enforcement unit" means any public agency having general police power and charged with making arrests in connection with enforcements of the criminal statutes and ordinances of this state or any county, city or town;

(7) "Peace officer" includes those persons specified in section 77-10-6; and

(8) "Protective order" means a restraining order issued pursuant to this act, which may be issued ex parte.

History: C. 1953, 30-6-1, enacted by L. 1979, ch. 111, § 1.

Title of Act.

An act enacting sections 30-6-1 through 30-6-9, Utah Code Annotated 1953, and section 76-5-108, Utah Code Annotated 1953; relating to spouse abuse; providing for the filing of verified complaints and the issuance of protective orders to stop such abuse; providing for the issuance of ex parte protective orders under certain circumstances; providing for hearings within ten days of the filing of the complaint; providing for assistance from the court clerks; providing for the con-

tents of protective orders; providing for enforcement of protective orders; providing for protection and assistance by peace officers in preventing abuse or threatened abuse; providing for abuse programs and services by the department of social services; and providing penalties for violations of protective orders. — Laws 1979, ch. 111

Cross-References.

Age of majority, 15-2-1.

Law Reviews.

Utah Legislative Survey — 1979, 1980 Utah L. Rev. 155.

30-6-2. Abuse or danger of abuse — Complaint and protective orders authorized. Any person who has been subjected to abuse, or to whom there is a substantial likelihood or immediate danger of abuse, shall be entitled to file a complaint, and seek such protective orders, as are provided by this act, whether or not that person has left the residence to avoid further abuse.

History: C. 1953, 30-6-2, enacted by L. 1979, ch. 111, § 2.

30-6-3. Venue of action. An action may be brought pursuant to this act in the district court of the county wherein either party resides or in which the action complained of took place.

History: C. 1953, 30-6-3, enacted by L. 1979, ch. 111, § 3.

30-6-4. Assistance by county clerk and county attorney. (1) The offices of the county clerk and the county attorney shall both provide forms and clerical assistance for to persons seeking to proceed under this act including chapter. By mutual agreement either office may be the sole provider of these services.

(1) ~~Providing forms~~ (2) Forms and assistance shall be provided in preparing and filing a complaint, where the plaintiff if the person seeking to proceed under this chapter is not represented by counsel, and when the forms are provided shall include:

(2) (a) Informing the plaintiff of the right to file impecuniously and of the requirements for such filing, and assisting the plaintiff with such impecunious filing, where applicable; and

(2) (b) Informing the plaintiff of the means available for the service of process in such action.

History: C. 1953, 30-6-4, enacted by L. 1979, ch. 111, § 4; L. 1983, ch. 113, § 1.

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30-6-5. Hearing upon verified complaint — Withdrawal of complaint — Ex parte orders — Contents — Service — Title to real property not affected. (1) Upon the filing of a verified complaint pursuant to under this act chapter, the court shall set a time for hearing the matters alleged therein, within ten days after that filing. This complaint may not be withdrawn except upon the order of the court.

(2) Upon application to the court, for good cause shown in the complaint, the court may immediately issue, without bond, an ex parte protective order, which shall remain in effect until the hearing.

(3) The complaint and any ex parte protective order issued shall contain notice of the date, time and place for the hearing and copies thereof shall be served personally upon the defendant in the manner provided by law for service of process, not less than five days prior to that hearing.

(4) If the plaintiff establishes the allegation of abuse by a preponderance of the evidence at the hearing, the court shall, without bond, extend the ex parte protective order or, if no such order has been issued, issue a protective order, for a definite period of time, not to exceed 60 days, and may assess such costs and attorneys' fees against either party as it may deem appropriate.

(5) Upon issuance of any protective order pursuant to under this act chapter, the county clerk shall provide two certified copies shall be provided to the plaintiff, who The plaintiff shall cause one of the copies one copy of the protective order and a copy of the complaint to be served upon the defendant; together with the copy of the complaint, as provided in subsection (3) and shall deliver the remaining copy of the protective order and together with a copy of the proof of service upon defendant, of the complaint and order to the appropriate law enforcement unit.

(6) No protective order issued pursuant to this act under this chapter may in any manner, affect affects the title to real property.

History: C. 1953, 30-6-5, enacted by L. 1979, ch. 111, § 5; L. 1983, ch. 113, § 2.

30-6-6. Protective orders — Contents — Ex parte orders not to affect certain rights. (1) Any protective order issued pursuant to this act may include an order that the defendant refrain from abusing the plaintiff, that the defendant immediately vacate and refrain from entering the plaintiff's dwelling, or such other order as the court may deem appropriate.

(2) No ex parte protective order may affect the parties' rights or interests in any of the following:

(a) Custody or visitation rights;

(b) Support responsibilities; or

(c) Recovery for medical expenses or other damages suffered as a result of the abuse.

(3) Every protective order issued pursuant to this act either ordering the defendant to refrain from abusing the plaintiff or ordering the defendant to vacate the plaintiff's dwelling shall conspicuously bear the following language: "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE CONSTITUTING A CLASS B MISDEMEANOR."

History: C. 1953, 30-6-6, enacted by L. 1979, ch. 111, § 6.

30-6-7. Proceedings independent from other actions. All proceedings pursuant to this act are separate and independent of any proceedings for divorce, annulment, or separate maintenance and the remedies provided are in addition to any other available civil or criminal remedies.

History: C. 1953, 30-6-7, enacted by L. 1979, ch. 111, § 7.

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30-6-8. Peace officers — Notification and enforcement of orders — Prevention of abuse in absence of order — Limitation on liability. (1) Law enforcement units shall establish procedures to ensure that peace officers at the scene of an alleged violation of a protective order may be informed of the existence and terms of such order. Those officers shall use every reasonable means to enforce such orders including, but not limited to, immediately arresting the offender and taking that offender into physical custody.

(2) Whenever any peace officer has reason to believe that an adult family member is being abused, or that there is a substantial likelihood or immediate danger of that member being abused, although no protective order has been issued that officer shall use all reasonable means to prevent further abuse, including:

(a) Remaining on the scene as long as it reasonably appears there would otherwise be danger to the physical safety of the victim;

(b) Making arrangements for the victim to obtain emergency medical treatment necessitated by the abuse;

(c) Making arrangements for the victim to obtain emergency housing;

(d) Explaining to the victim his or her rights in such matters;

(e) Asking the victim to sign a written statement describing the incident of abuse; or

(f) Arresting and taking into physical custody the assailant, if any of the situations set forth in section 77-13-3 exist.

(3) No peace officer shall be held criminally or civilly liable for the performance of, or failure to perform, any duty established by this act, so long as that officer acted in good faith and without malice.

History: C. 1953, 30-6-8, enacted by L. 1979, ch. 111, § 8.

30-6-9. Department to provide comprehensive support services. The department may establish and maintain, as funding is provided by the legislature, comprehensive support services to aid victims of abuse. These services may include assisting the plaintiff in completing the forms and providing other assistance in order to proceed under this chapter.

History: C. 1953, 30-6-9, enacted by L. 1979, ch. 111, § 9; L. 1983, ch. 113, § 3.

30-6-10. Standardization of forms. Forms for a complaint, protective order and ex parte protective order provided by the county clerks or county attorneys shall be in a form standardized under the direction of the Utah judicial council.

History: C. 1953, 30-6-10, enacted by L. 1983, ch. 113, § 4.

Title of Act.

An act relating to spouse abuse; providing for assistance by either the county clerks or county attorneys; providing that complaints may not be withdrawn except by the court;

and providing for standardization of forms for complaints and protective orders by the Utah judicial council.

This act amends sections 30-6-4, 30-6-5, and 30-6-9, Utah Code Annotated, 1953, as enacted by Chapter 111, Laws of Utah 1979; and enacts Section 30-6-10, Utah Code Annotated 1953. — Laws 1983, ch. 113.

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CHAPTER 36

SPOUSE ABUSE PROCEDURES ACT

Section

77-36-1. Definitions.

77-36-2. Law enforcement officers' training, duties and powers as to domestic violence calls — Reports — Records.

77-36-3. Court's powers and duties in domestic violence actions — Order restraining defendant — Violation as contempt.

77-36-4. Appearance of defendant required — Determinations by court.

77-36-5. Sentencing — Restricting contact with victim — Counseling — Cost.

77-36-6. Enforcement of orders restricting contact with victim.

77-36-7. Prosecutor to notify victim of decision as to prosecution.

77-36-8. Peace officers' immunity from liability.

77-36-9. Separability clause.

77-36-1. Definitions. As used in this chapter:

(1) "Cohabitant" means a person presently, or formerly a spouse, presently or formerly living as a spouse, any person who has one or more children in common with another person, regardless of whether they have been married or have lived together at any time, and any adult residing, or having resided within the same residence.

(2) "Domestic violence" includes but is not limited to any of the following crimes when committed by one cohabitant against another:

(a) Assault, as described in section 76-5-102;

(b) Aggravated assault, as described in section 76-5-103;

(c) Mayhem, as described in section 76-5-105;

(d) Criminal mischief, as described in section 76-6-106;

(e) Burglary, as described in section 76-6-202;

(f) Aggravated burglary, as described in section 76-6-203;

(g) Criminal trespass, as described in section 76-6-206;

(h) Aggravated kidnapping, as described in section 76-5-302; or

(i) Unlawful detention, as described in section 76-5-304.

(3) "Victim" means a cohabitant who has been subjected to domestic violence.

History: C. 1953, 77-36-1, enacted by L. 1983, ch. 114, § 1.

procedures to be followed by peace officers in responding to complaints of domestic violence; and providing for court orders.

Title of Act.

An act relating to spouse abuse; providing a definition of domestic violence; providing

This act enacts chapter 36 of Title 77, Utah Code Annotated 1953. — Laws 1983, ch. 114.

77-36-2. Law enforcement officers' training, duties and powers as to domestic violence calls — Reports — Records: (1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in domestic violence shall cooperate in all aspects of such training.

(2) The primary duty of peace officers, when responding to a domestic violence call, is to enforce the laws allegedly violated and to protect the complaining party.

(3) (a) When a peace officer responds to a domestic violence call and has reasonable cause to believe that a crime has been committed, the peace officer may exercise arrest powers as provided in section 77-7-2. In all cases where the officer does not immediately exercise arrest powers or initiate criminal proceedings by citation or otherwise the officer shall notify the victim of his or her right to initiate a criminal proceeding and of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall prepare a complete offense report including an officer's disposition of the case.

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(4) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(5) If there is reasonable cause to believe that an offense has been committed, the law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making the report, unless the case is under active investigation.

(6) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(7) Records kept pursuant to subsections (3) and (6) shall be made identifiable by means of a law enforcement agency code for domestic violence.

History: C. 1953, 77-36-2, enacted by L.
1983, ch. 114, § 1.

77-36-3. Court's powers and duties in domestic violence actions — Order restraining defendant — Violation as contempt. (1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent divorce or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage before instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed other than to the attorney of a criminal defendant, upon a showing that there is a possibility of further violence, provided, that the court may order a criminal defense attorney not to disclose to his client the victim's location;

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence; and

(e) Shall not dismiss a charge involving domestic violence at the request of the victim unless it has reasonable cause to assume that such a dismissal would benefit the victim.

(2) (a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant charged with a crime involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may issue an order prohibiting the defendant from having any contact with the victim. A violation of a court's order shall be treated as contempt.

(b) The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under Chapter 36, Title 77. The prosecutor shall provide a certified copy of the order to the victim.

History: C. 1953, 77-36-3, enacted by L.
1983, ch. 114, § 1.

77-36-4. Appearance of defendant required — Determinations by court. (1) A defendant arrested for an offense involving domestic violence as defined by section 77-36-1, shall be required to appear in person before a magistrate within one judicial day after the arrest; or

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by section 77-36-1 and is not arrested, shall appear in court for arraignment in person as soon as practicable, but in no event later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of the appearances provided in subsection (1) or (2), the court shall determine the necessity of imposing a protective order or other conditions of pretrial release, and its findings and determination shall be in writing.

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(4) Appearances required by this section are mandatory and may not be waived.

History: C. 1953, 77-36-4, enacted by L.
1983, ch. 114, § 1.

77-36-5. Sentencing — Restricting contact with victim — Counseling — Cost. (1) When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's contact with the victim, the condition shall be included in a written order and the prosecutor shall provide a certified copy of that order to the victim.

(2) In determining its sentence, the court, in addition to penalties otherwise provided for by law, may require the defendant to participate in treatment or therapy under the direction of an organization or individual experienced in domestic violence counseling. The court may also require the defendant to pay all or part of the cost of counseling incurred by the victim, as well as the costs for defendant's own counseling.

History: C. 1953, 77-36-5, enacted by L.
1983, ch. 114, § 1.

77-36-6. Enforcement of orders restricting contact with victim. Any law enforcement agency in this state may enforce orders restricting the defendant's contact with the victim.

History: C. 1953, 77-36-6, enacted by L.
1983, ch. 114, § 1.

77-36-7. Prosecutor to notify victim of decision as to prosecution. The prosecutor responsible for making the decision whether or not to prosecute shall advise the victim upon request of the status of the victim's case and shall notify the victim of a decision within five days after it is made. Notification to the victim that charges will not be filed shall include a description of the procedures available to the victim in that jurisdiction to initiate a criminal proceeding.

History: C. 1953, 77-36-7, enacted by L.
1983, ch. 114, § 1.

77-36-8. Peace officers' immunity from liability. A peace officer may not be held liable in any civil action brought by a party to an incident of domestic violence for making an arrest based on probable cause, for enforcing in good faith an order of the court, or for acting or omitting to act in any other way in good faith under this chapter in situations arising from an alleged incident of domestic violence.

History: C. 1953, 77-36-8, enacted by L.
1983, ch. 114, § 1.

77-36-9. Separability clause. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

History: C. 1953, 77-36-9, enacted by L.
1983, ch. 114, § 9.

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CHAPTER 3c

CONFIDENTIAL COMMUNICATIONS FOR SEXUAL ASSAULT ACT

- Section
 78-3c-1. Short title.
 78-3c-2. Purpose of act.
 78-3c-3. Definitions.
 78-3c-4. Disclosure of confidential communication — When allowed.

78-3c-1. Short title. This act shall be known and may be cited as the "Confidential Communications for Sexual Assault Act."

History: C. 1953, 78-3c-1, enacted by L. 1983, ch. 158, § 1.

Title of Act.

An act relating to sexual assault victims; providing that confidential communications

between victim and sexual assault counselor shall not be disclosed; and providing privilege from testifying to sexual assault counselor.

This act amends section 78-24-8, Utah Code Annotated 1953, as last amended by Chapter

140, Laws of Utah 1977; and enacts chapter 3c, Title 78, Utah Code Annotated 1953. — Laws 1983, ch. 158.

78-3c-2. Purpose of act. It is the purpose of this act to enhance and promote the mental, physical and emotional recovery of victims of sexual assault and to protect the information given by victims to sexual assault counselors from being disclosed.

History: C. 1953, 78-3c-2, enacted by L. 1983, ch. 158, § 1.

78-3c-3. Definitions. As used in this chapter:

(1) "Confidential communication" means information given to a sexual assault counselor by a victim and includes reports or working papers made in the course of the counseling relationship.

(2) "Rape crisis center" means any office, institution, or center assisting victims of sexual assault and their families which offers crisis intervention, medical, and legal services, and counseling.

(3) "Sexual assault counselor" means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.

(4) "Victim" means a person who has experienced a sexual assault of whatever nature including incest and rape and requests counseling or assistance regarding the mental, physical, and emotional consequences of the sexual assault.

History: C. 1953, 78-3c-3, enacted by L. 1983, ch. 158, § 1.

78-3c-4. Disclosure of confidential communication — When allowed. The confidential communication between a victim and a sexual assault counselor is available to a third person only when the counselor believes it is in the best interests of the victim to disclose the confidential communication, as in the case of a minor and his or her parents, and with the victim's consent, when it is necessary to accomplish the desired result of counseling or assistance.

History: C. 1953, 78-3c-4, enacted by L. 1981, ch. 158, § 1.

* * *

78-24-8. Privileged communications. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(6) A sexual assault counselor as defined in section 78-3c-3 cannot, without the written consent of the victim or his or her guardian if the victim is unable to write, be examined in a civil or criminal proceeding as to any confidential communication as defined in section 78-3c-3 made by the victim.

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1.3 Losses Covered	
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1.5 Required to Show Financial Need	
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Category	Citation
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15.4 Sexual Assault Counselor Privilege	

VERMONT

Vermont Statutes Annotated

Title 28

§ 252. Conditions of probation

(a) The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the offender will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that if the offender is convicted of another offense during the period for which the sentence remains subject to revocation, then the court may impose revocation of the offender's probation.

(b) When imposing a sentence of probation, the court may, as a condition of probation, require that the offender:

(5) Make restitution or reparation to the victim of his conduct for the damage or injury which was sustained. When restitution or reparation is a condition of the sentence, the court shall fix the amount thereof, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance;

§ 253. Modification of conditions; revocations

(a) During the period of probation, the court, on application of a probation officer or of the offender, or on its own motion, may modify the requirements imposed upon the offender or add further requirements authorized by section 252 of this title.

(b) Whenever the court proposes any modification of the conditions of probation, the probationer shall have a reasonable opportunity to contest the modification prior to its imposition.

(c) When restitution or reparation to the victim has been ordered under subdivision 252(b)(5), and the offender has failed to comply with the order, the state's attorney, after receiving an affidavit filed with the state's attorney by the victim or the probation officer, asserting noncompliance, may initiate a proceeding for revocation of probation.—Added 1971, No. 199 (Adj. Sess.), § 20, eff. July 1, 1972; amended 1981, No. 223 (Adj. Sess.), § 19.

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Title 32

§ 1551. Attendance fees

There shall be allowed to witnesses the following fees:

(1) For attendance before a district or superior court or court of jail delivery, or to give a deposition before a notary public, \$10.00 a day;

(2) For attendance before an appraiser appointed by the commissioner of taxes, \$10.00 a day; such fees to be apportioned as the appraiser may direct;

(3) For attendance on other courts or tribunals, \$10.00 a day;

(4) For travel in the state, all witnesses shall receive 8 cents a mile each way

Title 13

§ 3015. Obstruction of justice

Whoever corruptly, or by threats or force, or by any threatening letter or communication, intimidates or impedes any witness, grand or petit juror, or officer in or of any court of the state of Vermont, or causes bodily injury to such person or intentionally damages the property of such person on account of such person's attendance at, deliberation at, or performance of his or her official duties in connection with a matter already heard, presently being heard or to be heard before any court of the state of Vermont, or corruptly or by threats or force or by any threatening letter or communication, obstructs or impedes, or endeavors to obstruct or impede the due administration of justice, shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.—Added 1977, No.

Title 28

§ 204. —Submission of written report; protection of records

(a) A court, before which a person is being prosecuted for any crime, may in its discretion order the commissioner to submit a written report as to the circumstances of the alleged offense and the character and previous record of the person, with recommendation.

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(e) The presentence report shall include the comments or written statement of the victim, or the victim's guardian or next of kin if the victim is incompetent or deceased, whenever the victim or the victim's guardian or next of kin choose to submit comments or a written statement.

Title 13

§ 2506. Disposition of property upon arrest for larceny or robbery

The officer who arrests a person charged as principal or accessory in robbery or larceny shall secure, if to be found, the property alleged to be stolen, and shall be answerable for the same, and shall annex a schedule thereof to his return. Upon conviction of the offender, the property shall be restored to the owner.

Title 18

Chapter 22. Reports of Abuse, Neglect and Exploitation of Older Vermonters

SECTION

- 1150. Purpose.
- 1151. Definitions.
- 1152. Suspected abuse and neglect of older Vermonters; remedial action.
- 1153. Nature and content of report; to whom made.
- 1154. Investigation; remedial action.
- 1155. Records of abuse, neglect and exploitation.

§ 1150. Purpose.

The purpose of this chapter is to: protect older Vermonters whose health and welfare may be adversely affected through abuse, neglect or exploitation; to provide a temporary or permanent nurturing and safe environment for older Vermonters when necessary; and for these purposes to require the reporting of suspected abuse, neglect and exploitation of older Vermonters; and investigation of such reports and provisions of services, when needed, to older Vermonters.—Added 1979, No. 150 (Adj. Sess.).

§ 1151. Definitions

As used in this chapter:

- (1) "Older Vermonter" means an individual who is sixty years of age or older;

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(2) "Abuse" means physical injury or injuries inflicted upon an older Vermonter by other than accidental means, or any other treatment which places an older Vermonter's life, health or welfare in jeopardy or which is likely to result in impairment of the older Vermonter's health;

(3) "Neglect" means the lack of subsistence, medical or other care necessary for an older Vermonter's well-being;

(4) "Exploitation" means the act or process of taking pecuniary advantage of an older Vermonter by use of undue influence, harassment, duress, deception, false representations or false pretenses.—Added 1979, No. 150 (Adj. Sess.).

§ 1152. Suspected abuse and neglect of older Vermonters; remedial action

(a) Any physician, surgeon, osteopath, chiropractor or physician's assistant licensed or registered under the provisions of Title 26, any resident physician, intern, or any hospital, nursing home or community care home administrator in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, dentist, or police officer who has reasonable cause to believe that any older Vermonter has been abused, neglected or exploited shall report or cause a report to be made in accordance with the provisions of section 1153 of this title.

(b) Any psychologist, mental health professional, social worker, clergyman or any other concerned person who has reasonable cause to believe that any older Vermonter has been abused, neglected or exploited may report or cause a report to be made in accordance with the provisions of section 1153 of this title.

(c) Any person enumerated in subsection (a) or (b) of this section who in good faith makes a report shall be immune from liability, for libel or slander which might otherwise be incurred or imposed as a result of making a report.

(d) Any person who violates subsection (a) of this section shall be fined not more than \$100.00.—Added 1979, No. 150 (Adj. Sess.).

§ 1153. Nature and content of report; to whom made

A report shall be made orally or in writing to the commissioner of health or his designee. If an oral report is made by telephone or otherwise, the commissioner or his designee shall request that it be followed within one week by a report in writing. Reports shall contain the name and address of the reporter as well as the names and addresses of the older Vermonter and persons responsible for his care, if known; the age of the older Vermonter; the nature and extent of the older Vermonter's abuse, neglect or exploitation together with any evidence of previous abuse, neglect or exploitation of the older Vermonter; and any other information that the re-

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porter believes might be helpful in establishing the cause of the injuries or reasons for the neglect or exploitation as well as in protecting the older Vermonter. If a report of abuse, neglect, or exploitation involves the acts or omissions of the commissioner of health or employees of that department, then such reports shall be directed to the secretary of the agency of human services who shall cause the report to be investigated by staff of the departments of mental health, social and rehabilitation services or other appropriate staff other than staff of the department of health. If the report is substantiated, services shall be offered according to the requirements of section 1154 of this title.—Added 1979, No. 150 (Adj. Sess.).

§ 1154. Investigation; remedial action

The commissioner of health shall cause reports made pursuant to subsection (a) of section 1153 of this title to be investigated within seventy-two hours. If the investigation produces evidence that the older Vermonter has been abused, neglected or exploited, the commissioner shall cause assistance to be provided to the older Vermonter in accordance with a written plan of treatment.—Added 1979, No. 150 (Adj. Sess.).

§ 1155. Records of abuse, neglect and exploitation

(a) The commissioner of health shall maintain a registry which shall contain written records of all investigations initiated under section 1154 of this title unless the commissioner or his designee determines after investigation that the reported facts are unfounded, in which case the unsubstantiated report shall be destroyed.

(b) The commissioner shall adopt regulations to permit use of the registry while preserving confidentiality of the records.

(c) Written records maintained in the registry shall only be disclosed to the commissioner or person designated by him to receive such records, persons assigned by the commissioner to investigate reports, the person reported to have abused, neglected or exploited an older Vermonter, or a state's attorney. In no event shall records be made available for employment purposes, for credit purposes, or to a law enforcement agency other than the state's attorney. Any person who violates this subsection shall be fined not more than \$500.00. A person may, at any time, apply to the human services board for relief if he has reasonable cause to believe that contents

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of the registry are being misused. All registry records relating to an older Vermonter shall be destroyed when the older Vermonter has deceased. All registry records shall be maintained according to the name of the person who has been found to have abused, neglected or exploited an older Vermonter.

(d) A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him on the grounds that it is unfounded or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged.—Added 1979, No. 150 (Adj.

Title 32

§ 1407. Costs to be borne by the state

The state shall bear the costs of medical and psychological examinations administered to victims of crime committed in this state, in instances where that examination is requested by a law enforcement officer or a prosecuting authority of the state or any of its subdivisions. The state shall also bear the costs of medical examinations administered to victims in cases of alleged sexual assault where the victim obtains such an examination prior to receiving such a request. A victim, at his or her own expense, may obtain copies of the results of an examination under this section.—

Title 15

Chapter 21. Abuse Prevention

SECTION

- 1101. Definitions.
- 1102. Jurisdiction.
- 1103. Requests for relief.
- 1104. Emergency relief.
- 1105. Service.
- 1106. Procedure.
- 1107. Filing orders with law enforcement personnel.
- 1108. Enforcement.

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§ 1101. Definitions

The following words as used in this chapter shall have the following meanings:

(1) "Abuse" means the occurrence of one or more of the following acts between family or household members:

- (A) attempting to cause or causing physical harm;
- (B) placing another in fear of imminent serious physical harm;
- (C) abuse to children as defined in chapter 14 of Title 33.

(2) "Family or household members" means spouses or former spouses, persons of the opposite sex living as spouses now or in the past, or persons sixty years of age or older living in the same household and related by blood or marriage.—Added 1979, No. 153 (Adj. Sess.), § 1; amended 1981, No. 207 (Adj. Sess.), § 2, eff. April 25, 1982; No. 218 (Adj. Sess.), § 1.

1981 (Adj. Sess.) amendment. Subdivision (1)(C): Act No. 207 substituted "chapter 14 of Title 33" for "section 1352 of Title 13".
Subdivision (2): Act No. 218 added "persons of the opposite sex living as spouses now or in the past, or persons sixty years of age or older living in the same household and related by blood or marriage."

§ 1102. Jurisdiction

Proceedings under this chapter may be commenced in either the district court or the superior court of the county in which the plaintiff resides. If the plaintiff has left the residence or household to avoid abuse, he shall have the option to bring an action in the county of the previous residence or household or the county of the new residence or household. If a proceeding under this chapter is commenced in a district court and, subsequently, either party commences a proceeding for annulment or divorce, the clerk of the district court shall certify the proceeding under this chapter to the clerk of the superior court having jurisdiction over the annulment or divorce proceeding for consolidation. Any district court order in effect in a proceeding under this chapter which has been transferred to superior court shall continue in effect until discharged or modified by a superior court.—Added 1979, No. 153 (Adj. Sess.), § 1.

§ 1103. Requests for relief

(a) Any family or household member may seek relief from

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abuse by a person who is living or has lived in the petitioner's household on behalf of himself or his children by filing a petition under this chapter requesting an order or orders which include the following:

(1) an order that the defendant refrain from abusing the plaintiff, his children or both and from interfering with their personal liberty;

(2) an order that the defendant immediately vacate the household, and that the plaintiff be awarded sole possession of a residence;

(3) an award of temporary custody of a minor.

(b) Except as provided in section 1104 of this title, the court shall grant relief only after notice to the defendant and a hearing. Relief shall be for a fixed period of time not to exceed one year, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff, his children or both from abuse. The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstances.

(c) No filing fee shall be required.—Added 1979, No. 153 (Adj. Sess.), § 1; amended 1981, No. 218 (Adj. Sess.), § 5; 1983, No. 34, eff. April 18, 1983.

1983 amendment. Subsection (a): In the introductory sentence inserted "who is" preceding "living" and "or has lived" thereafter and "petitioner's" preceding "household."

1981 (Adj. Sess.) amendment. Subsection (a): Substituted "person living in the household" for "family or household member".

§ 1104. Emergency relief

(a) In accordance with the rules of civil procedure, temporary orders under this chapter may be issued ex parte, without notice to defendant, upon motion and findings by the court that defendant has abused plaintiff, his children or both. Relief under this section shall be limited as follows:

(1) upon a finding that there is an immediate danger of further abuse, an order may be granted requiring the defendant

(A) to refrain from abusing the plaintiff, his children or both and

(B) to refrain from interfering with the plaintiff's personal liberty, the personal liberty of plaintiff's children, or both;

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(2) upon a finding that the plaintiff, his children or both have been forced from the household and will be without shelter unless the defendant is ordered to vacate the premises, the court may order the defendant to vacate immediately the household and may order sole possession of the premises to the plaintiff;

(3) upon a finding that there is immediate danger of physical or emotional harm to minor children, the court may award temporary custody of these minor children to the plaintiff or to other persons.

(b) Every order issued under this section shall contain the name of the court, the names of the parties, the date of the petition, the date and time of the order and shall be signed by the judge. Every order issued under this section shall state upon its face a date, time and place when the defendant may appear to petition the court for modification or discharge of the order. This opportunity to contest shall be scheduled as soon as reasonably possible, which in no event shall be more than 10 days from the date of issuance of the order. At such hearings, the plaintiff shall have the burden of proving abuse by a preponderance of the evidence. If the court finds that the plaintiff has met his burden, it shall continue the order in effect and make such other order as it deems necessary to protect the plaintiff.

(c) Form petitions and form orders shall be provided by the court administrator and shall be maintained by the clerks of the courts.

(d) Every order issued under this chapter shall bear the following language: "VIOLATION OF THIS ORDER MAY RESULT IN PROSECUTION FOR A CRIMINAL OFFENSE".—Added 1979, No. 153 (Adj. Sess.), § 1.

§ 1105. Service

A petition or ex parte temporary order issued under this chapter shall be served in accordance with the rules of civil procedure and may be served by any municipal or state police officer if so ordered by the court. The person making service shall file a return of service with the court stating the date, time and place at which the order was delivered personally to the defendant.—Added 1979,

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(a) Except as otherwise specified in this chapter, proceedings commenced under this chapter shall be in accordance with the rules of civil procedure and shall be in addition to any other available civil or criminal remedies.

(b) The court administrator shall establish procedures to insure access to relief after regular court hours, or on weekends and holidays. The court administrator is authorized to contract with public or private agencies to assist petitioners to seek relief and to gain access to district and superior judges. Law enforcement agencies shall assist in carrying out the intent of this section.—Added 1979, No. 153 (Adj. Sess.), § 1; amended 1981, No. 218 (Adj. Sess.), § 3.

1981 (Adj. Sess.) amendment. Subsection (a): Designated existing section as subsec. (a).
Subsection (b): Added.

§ 1107. Filing orders with law enforcement personnel

Police departments, sheriff's departments and state police district offices shall establish procedures for filing orders issued under this chapter and for making their personnel aware of the existence and contents of such orders.—Added 1979, No. 153 (Adj. Sess.), § 1.

§ 1108. Enforcement

Law enforcement officers are authorized to enforce orders issued under this chapter. Enforcement may include, but is not limited to:

(1) making an arrest if the officer has probable cause to believe a violation of an order issued under this chapter has been committed, notwithstanding the provisions of V.R.Cr.P. 3;

(2) assisting the recipient of an order granting sole possession of the residence to obtain sole possession of the residence if the defendant refuses to leave;

(3) assisting the recipient of an order granting sole custody of children to obtain sole custody of children if the defendant refuses to release them.—Added 1981, No. 218 (Adj. Sess.), § 4.

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Title 3

18. Spouse abuse programs; eligibility; reporting

(a) There is hereby created a spouse abuse program.

(b) The governor's commission on the status of women, established in the executive office of the governor, shall be authorized to award grants for the spouse abuse program. Awards shall be made by the commission to spouse abuse programs established for the purpose of providing shelter, protection or support for battered or abused spouses. The commission shall, insofar as possible, award grants to provide reasonable geographic distribution of funds around the state.

(c) The commission shall, on or before January 1 of each year, forward to the speaker of the house and president of the senate an annual report on the status of the program. This report shall include, but not be limited to, such areas as:

- (1) actual disbursements;
- (2) number of facilities and programs served;
- (3) the impact of the monies relative to the continued success of each particular program;
- (4) incidence of spouse abuse in the state;
- (5) identification of potential funding sources.

(d) In order to receive funds under this section, each participating program shall:

- (1) receive some funding from one or more local, municipal or county source, public or private. Contributions in kind, whether material, commodities, transportation or office space, may be evaluated and counted as part of this requirement;
- (2) reapply annually for continued funding as necessary.

(e) Duties and functions of the commission.

(1) The commission shall adopt rules under chapter 25 of Title 3 pursuant to which interested local programs may apply for funding. Any local agency or organization may apply to participate.

(2) The commission shall establish minimum standards for eligibility for state funds awarded through the provisions of this statute.—Added 1981, No. 123 (Adj. Sess.), § 2.

Category	Citation
1. Victim Compensation Program	34-151 et seq.
1.1 Responsible Agency	34-153(3)
1.2 Eligible Claimants	34-161(a), 34-164(b)(4),(5),(6),(7)
1.3 Losses Covered	34-163(b)
1.4 Minimum and Maximum Award	34-164(a)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	34-161(b)
1.7 Filing of Claim - Time Limit	34-161(b)
1.8 Emergency Award	
1.9 Funding	34-171
2. Restitution	
2.1 Sentencing Option	5-3711(a),(c)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	5-660
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	5-3941 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	34-158(g) (compensation commission records)
15.4 Sexual Assault Counselor Privilege	

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Virgin Islands Code Annotated

Title 34

Chapter 7. Criminal Victims Compensation Act

Subchapter I. Short Title; Declaration of Policy; Definitions

SECTION ANALYSIS

- 151. Short title.
- 152. Statement of policy.
- 153. Definitions.

Subchapter II. Administration and Procedure

- 156. Powers and duties of the Executive Secretary: Preliminary hearings; reports with recommendations; submission to Commission.
- 157. Powers and duties of the Commission: final orders and decisions; finality.
- 158. Procedural powers and limitations; rights of parties; effect of criminal conviction; immunity of witnesses.

Subchapter III. Application; Award and Payment of Compensation

- 161. Application: Eligibility; Requirements; Limitations.
- 162. Offenses and incidents covered.
- 163. Awards: General provisions; allowable compensation; standards for compensation; effect of prosecution or conviction.
- 164. Same: Limitations.
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Subchapter IV. Recovery of Compensation

- 169. Repayment by the applicant.
- 170. Recovery from the offender.
- 171. Criminal Victims Compensation Fund.

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- 174. Rules and regulations.
- 175. Personnel; budget.
- 176. Reports to the Governor and to the Legislature.
- 177. Penalties.
- 178. Schedule of legal and attorney's fees

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Subchapter I. Short Title; Declaration of Policy; Definitions

§ 151. Short title

This chapter shall be known as and may be cited as the "Virgin Islands Criminal Victims Compensation Act". It shall be liberally construed to effect its purposes.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 22.

Effective date. Section 5 of Act March 6, 1968, No. 2111, Sess. L. 1968, Pt. I, p. 34, provided: "The provisions of this Act [adding this chapter, section 375a of Title 3, and section 3030 of Title 33] shall become effective on July 1, 1968".

§ 152. Statement of policy

The purpose of the provisions of this chapter is to establish a program of public compensation to innocent victims of certain criminal offenses, to the persons injured or killed while attempting to prevent the commission of criminal offenses or to apprehend suspected offenders, and to families of such victims or persons for personal injuries or deaths resulting from the commission of such offenses. This purpose is a reflection of the recognition by the Legislature of the Virgin Islands that many criminal offenses result from social and economic diseases of the community, while many others result from the temporary and permanent mental and emotional aberrations of the offender, and still others are perpetrated by the asocial and the socially immature and immoral, all of which are beyond the control of most victims of crimes. The Legislature is further cognizant of the social need to enlist and encourage the cooperation of the public in preventing crimes and in capturing criminals and to compensate any person who is injured while attempting to prevent a crime or apprehend a criminal. With this recognition as a base, the Legislature determines and declares, as a matter of public policy, that no innocent victim of any criminal offense covered by this chapter, no person injured while fulfilling his public duty in attempting to prevent a crime or to apprehend a criminal, and no family of any such victim or person shall be constrained to bear the financial burden of resulting personal injury or death, and that the Government of the people of the Virgin Islands shall compensate any such victim or person or family for the loss resulting from such injury or death.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 22.

§ 153. Definitions

Unless the context clearly requires otherwise, as used in this chapter—

- (1) The term "applicant" means any person who applies for

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compensation under the provisions of this chapter.

- (2) The term "child" means an unmarried person who is under eighteen years of age and includes a stepchild or an adopted child.

- (3) The term "Commission" means the Virgin Islands Criminal Victims Compensation Commission created and established by Section 375a of Title 3 of this Code.

- (4) The term "dependents" means such relatives of a deceased victim as were substantially dependent upon his income at the time of his death, or would have been so dependent but for the incapacity due to the injury from which death resulted, and shall include the child of such victim born after his death.

- (5) The term "Executive Secretary" means the Executive Secretary of the Commission.

- (6) The term "offender" means any person accused, indicted, or convicted of the criminal offense which was the alleged cause of the injury or death for which compensation is sought under the provisions of this chapter.

- (7) The terms "personal injury" and "injury" mean actual bodily harm, and include pregnancy and mental or nervous shock.

- (8) The term "victim" means any person who is injured or killed—

(A) by an act or omission of any other person which is within the scope of the criminal offenses covered by subsection (a) of section 162 of this chapter, or

(B) while attempting to prevent the commission of a criminal offense under the provisions of Title 14 of this code, or to apprehend a person suspected of such an offense.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 23.

Subchapter II. Administration and Procedure

§ 156. Powers and duties of the Executive Secretary: Preliminary hearings; reports with recommendations; submission to Commission

- (a) Except as otherwise provided in this chapter, the Executive Secretary shall administer the provisions of this chapter.

- (b) Upon an application made to the Commission under the provisions of this chapter, the Executive Secretary shall hold a prompt and fair hearing on each application filed under this chapter, and, on the basis of evidence received, shall prepare a written report with recommendation for action on such application by the Commission.

- (c) The Executive Secretary, within five days after the preparation of the report with recommendations, shall submit copies to each member of the Commission, to the applicant, to the victim

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if he is not the applicant and is living, and to any offender, and he shall submit, upon request, copies to any other person who satisfies the Executive Secretary that he has a substantial interest in the proceedings. He shall further, within 30 days after the preparation of the report with recommendation, submit such report and recommendation to the Commission and call the Commission to formal meeting for the purposes of considering and acting upon the application and the report.

(d) The Executive Secretary shall notify the applicant, the victim if he is not the applicant and is living, any offender, and any other person who satisfies the Executive Secretary that he has a substantial interest in the proceedings of the time and place for the preliminary hearing before him and for the final consideration by the Commission.

(e) The Executive Secretary shall execute all orders of the Commission.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 24.

§ 157. Powers and duties of the Commission: final orders and decisions; finality

(a) When called to consider and to act upon an outstanding application and accompanying report submitted pursuant to section 156(c) of this chapter, the Commission shall make its determination and issue its order with due dispatch. Such determination and order of the Commission shall be final as provided by section 166 of this chapter.

(b) The Commission shall hold a fair hearing before making its determinations and before rendering a final order when such a hearing is requested by the Executive Secretary, by a majority of the members of the Commission, by the applicant, or by the offender.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 24.

§ 158. Procedural powers and limitations; rights of parties; effect of criminal conviction; immunity of witnesses

(a) The Executive Secretary and the Commission, when conducting a proceeding under this chapter, shall have the authority and the power to administer oaths and affirmations, to issue subpoenae ad testificandum and subpoenae duces tecum which shall be enforceable pursuant to the pertinent provisions of chapter 29, Title 14, Virgin Islands Code, in any case of contumacious failure to comply with any such subpoena, to rule upon offers of proof and receive relevant evidence, to take or cause depositions to be

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taken when it is determined that the prompt and fair disposition of the proceeding will be furthered thereby, to require reports or testimony from medical doctors or psychologists who have treated or examined the victim in relation to the injury or death for which compensation is sought, to direct the course of the proceeding, to dispose of procedural requests and motions, to make recommendations, determinations, and orders in conformity with sections 156 and 157 of this chapter, and to take any other action authorized by rules and regulations promulgated pursuant to the provisions of this chapter. No subpoena may be issued except under the signature of the Chairman of the Commission or of the Executive Secretary, and application to any court for the enforcement of such subpoena may be made only by the Chairman or Executive Secretary.

(b) The Commission shall adopt by regulation as the rules of evidence in connection with the preliminary hearing and in connection with the final consideration the provisions of section 10 of the Revised Model State Administrative Procedure Act promulgated in 1961 by the National Conference of Commissioners on Uniform State Laws.

(c) The applicant, any offender, and any other person who satisfies the Executive Secretary at the preliminary hearing or the Commission at the final consideration that he has a substantial interest in the proceedings shall have the right to appear and be heard, either in person or by attorney, and shall also have the right to produce evidence and to call, to examine, and to cross-examine witnesses.

(d) Any person who files an application under the provisions of subsection (c) of section 161 of this chapter on behalf of a victim or a dependent who is a child or who is non compos mentis shall have all of the procedural rights and privileges granted and guaranteed to applicants under this chapter.

(e) No person appearing as a witness before the Commission at final consideration may be excused from answering any question put to him by any member of the Commission on the ground that to answer might or would incriminate him; but no answers made by any witness to any such question shall be used or admitted in evidence in any proceeding against such witness, except in a criminal prosecution against the person for perjury or for contempt in respect to any answer to any such question. Refusal to answer any question determined by the Commission to be proper and pertinent shall be subject to punishment for contempt under the pertinent provisions of chapter 29, Title 14, Virgin Islands

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Code.

(f) In making a determination the Commission shall consider all circumstances which it determines to be relevant, including provocation, consent, or any other behavior of the victim which directly contributed to his injury or death.

(g) The Executive Secretary, in connection with the preliminary hearing, and the Commission, in connection with the final consideration, may not make public any information which might lead to the identification of the offender or of the victim if—

(1) the offender has not been convicted, or

(2) the Executive Secretary or the Commission is satisfied that privacy is necessary to protect the interests of the victim or any dependent of the victim.

(h) Every determination of the Commission shall be based on the evidence before it and shall be supported by substantial evidence. The applicant shall have the burden of proving every pertinent fact, which is brought into issue, to the satisfaction of the Commission.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 26.

Subchapter III. Application; Award and Payment of Compensation

§ 161. Application: Eligibility; Requirements; Limitations

(a) Any victim, any person who is responsible for the maintenance or care of the victim and who has incurred expenses as a result of injury to or the death of the victim, and, in the case of the death of the victim, the estate or any dependents of the victim may apply for compensation under the provisions of this chapter.

(b) Every application for compensation under this chapter shall be filed with the Executive Secretary in accordance with regulations prescribed by the Commission within two years after the personal injury or death occurs. Additionally, the Executive Secretary must be notified within thirty days after such injury or death occurs that an application for compensation under this chapter will be filed, and a report of the criminal offense which allegedly caused the injury or death for which compensation is sought under this chapter shall be filed by the victim with the police within twenty-four hours after the offense was committed. If the application, notification, or report is not filed or made within the time prescribed, the applicant shall have the burden of satisfying the Executive Secretary that the delay was justified by extraordinary circumstances.

(c) In any case in which the victim or a dependent of a victim is a child, the application may be filed on his behalf by his parent

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or guardian; and in any case in which the victim or a dependent of the victim is mentally incompetent the application may be filed on his behalf by his parent, guardian, or such other person authorized to administer his estate.

(d) No more than one application may be filed by or on behalf of any person eligible to file an application under the provisions of subsection (a) of this section; and where more than one application is filed on behalf of two or more dependents of the same victim the Executive Secretary and the Commission shall consolidate the claims and the proceedings thereunder.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 27; amended Aug. 11, 1972, No. 3285, § 3, Sess. L. 1972, p. 416; Sept. 6, 1978, No. 4195, § 1(a), Sess. L. 1978, p. 213.

1978—Subsection (a): Deleted the proviso which read: "Provided, however, That no person who is not a citizen of the United States or who is not an immigrant alien admitted to the United States for permanent residence under the pertinent provisions of the Immigration and Nationality Act, as amended (8 U.S.C. §§ 1101 et seq.) may apply for or receive compensation under the provisions of this chapter".

1972—Subsection (b): In the first sentence substituted "within two years" for "within one year".

1. Constitutionality. Classification made under this section, providing that persons not United States citizens or an immigrant alien admitted to the United States for permanent residence may not apply for or receive compensation, is constitutionally impermissible under the Equal Protection Clause inasmuch as the distinction is wholly unrelated to the central designs of the Act. *Sailor v. Tonkin*, D.C.V.I. 1973, 9 V.I. 421.

Visiting aliens could not be excluded from compensation under this section on the ground that the Government may regulate the dispersal of its public funds in favor of its citizens and permanent-resident aliens, who purportedly are taxpayers. *Id.*

§ 162. Offenses and incidents covered

(a) The Commissioner may order the payment of compensation in accordance with the provisions of this chapter in any case in which—

(1) The victim was injured or killed by any act or omission that constitutes a criminal offense which is a felony or aggravated assault and battery under the laws of the Virgin Islands and which may be prosecuted under the laws of the Virgin Islands pursuant to the provisions of subchapter V, chapter 1, Title 14 of this code; or

(2) The victim was injured or killed while attempting to prevent the commission of a criminal offense which may be prosecuted under the laws of the Virgin Islands pursuant to the provisions of subchapter V, chapter 1, Title 14 of this code, or to apprehend a person suspected of such an offense.

(b) For the purposes of this chapter, the fact that the offender was legally incapable of forming a criminal intent by reason of age, insanity, drunkenness, or otherwise shall not preclude an award of compensation under this chapter.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 27.

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§ 163. Awards: General provisions; allowable compensation, standards for compensation; effect of prosecution or conviction

(a) The Commission, upon proper application and after the required preliminary hearing before the Executive Secretary and the required final consideration and if it determines that the applicant has satisfied the burden of proving all contested issues of fact, may order the payment of compensation in accordance with the provisions of this chapter from the Criminal Victims' Compensation Fund created and established as a special revolving fund in the Treasury of the Virgin Islands under section 3030 of Title 33 of this code.

(b) Subject to the limitations of subsection (a) of section 164 of this subchapter and to the deductions and limitations under section 165 of this subchapter, the Commission may order the payment of compensation—

(1) to, or for the benefit of, the victim or to his estate up to the amount of expenses actually and reasonably incurred or to be incurred as a result of the injury or death of the victim, including medical, burial, and other necessary expenses; provided, however, that payments for burial expenses shall not exceed one thousand five hundred dollars (\$1,500);

(2) to any person responsible for the maintenance or care of the victim who has incurred expenses as a result of the injury or death of the victim, including medical, burial, and other necessary expenses, up to the amount of such expenses; provided, however, that payments for burial expenses shall not exceed one thousand five hundred dollars (\$1,500);

(3) to or for the benefit of the victim for—

(A) the loss of earnings resulting from total or partial disability resulting from the injury equal to two-thirds ($\frac{2}{3}$) of the difference between his earnings (or earnings power, if the victim was not employed) at the time when the injury occurred, and the wages, if any, earned by the victim during his disability; and

(B) pain and suffering, but not to exceed five hundred dollars (\$500);

(4) in the case of the death of the victim, to or for the benefit of any one or more of the dependents of the victim up to the amount of the pecuniary loss of such dependents, but not to exceed ten thousand dollars (\$10,000) to the spouse of the deceased victim and not to exceed two thousand five hundred dollars (\$2,500) to each dependent of the deceased victim other than the spouse.

(c) For the purpose of determining the amount of any compensation to be awarded under this chapter, the Commission shall,

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insofar as practicable and feasible, formulate standards for the uniform and consistent application of the provisions of this chapter, and shall take into consideration rates and amounts of compensation payable for injuries and death under other laws of the Virgin Islands and of the United States and the availability of funds in the Criminal Victims' Compensation Fund.

(d) An award may be granted under this chapter whether or not any person is prosecuted for or convicted of the crime which is the alleged cause of the injury or death. The Executive Secretary or the Commission may suspend the preliminary hearing or the final consideration, respectively, for such appropriate period during which a prosecution for the criminal offense, which is the alleged cause of the injury or death for which compensation is sought, has been commenced or is imminent.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 28; amended Sept. 6, 1978, No. 4195, § 1(b)–(e), Sess. L. 1978, p. 213.

1978—Subsection (b)(1): Added proviso which limited payments for burial expenses to \$1,500.

Subsection (b)(2): Added proviso which limited payments for burial expenses to \$1,500.

Subsection (b)(3)(A): Deleted the phrase "but not to exceed four hundred dollars (\$400) in any one month".

Subsection (b)(4): Substituted "two thousand five hundred dollars (\$2,500) for "one thousand dollars (\$1,000)" as payment of compensation to each dependent of the deceased victim other than the spouse.

§ 164. Same: Limitations

(a) The total amount of compensation awarded or paid to any one applicant under the provisions of section 163 of this subchapter may not exceed the sum of \$15,000.

(b) The Commission may not award compensation to an applicant under this chapter if, supported by substantial evidence, it determines that—

(1) The criminal offense, which allegedly caused the injury or death for which compensation is sought under this chapter, did not occur; but if any person has been convicted of the criminal offense, proof of that conviction unless an appeal against the conviction or a petition for a rehearing, retrial, or certiorari in respect of all charges is pending or a new trial or rehearing has been ordered, shall be res judicata as to the fact that the criminal offense has been committed; or

(2) The act or omission which constituted such criminal offense was not a proximate cause of the injury or death; or

(3) The requirements of section 161 of this chapter were not met or the provisions of section 162 of this subchapter were not satisfied; or

(4) The offender is the victim's spouse, parent, grandparent, stepparent, child, grandchild, stepchild, brother, sister, half brother, half sister, or spouse's parent, grandparent, stepparent, child, grand-

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child, stepchild, brother, or sister; or

(5) At the time when the personal injury or death was caused or at any time after the injury, either the victim was living with the offender as his wife or as her husband, or both the victim and the offender were members of the same household; or

(6) The victim and the offender, at the time when the injury or death was caused, were engaged in a common unlawful enterprise or activity; or

(7) The injury or death was caused by the operation of a motor vehicle, airplane, or boat, unless the vehicle, airplane, or boat was used as a weapon in a deliberate attempt to injure or kill the victim.

(c) In determining the amount of an award, the Commission shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the Commission shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the Commission may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility 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.

(d) Orders for payment of compensation pursuant to this chapter may be made only as to injuries or death caused by criminal offenses occurring after January 1, 1968, or caused during an attempt to prevent a criminal offense or to apprehend a person suspected of committing such an offense which attempt occurred after January 1, 1968.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 29; amended July 16, 1968, No. 2286, § 1, Sess. L. 1968, Pt. II, p. 236; Sept. 6, 1978, No. 4195, § 1(f)–(h), Sess. L. 1978, p. 214.

1978—Subsection (a): Substituted the sum of "\$15,000" for "\$10,000".
Subsection (b)(6): Deleted former subdiv. (6) and renumbered subdivs. (7) and (8) as (6) and (7).

Subsection (c): Former subsec. (c) relettered as (d) and a new (c) added.
Subsection (d): Relettered from former subsec. (c).

1968—Subsection (c): Substituted "January 1, 1968" for "June 30, 1968."

§ 165. Same: Terms of payment; deductions

(a) Except as otherwise provided in this chapter, any order for the payment of compensation under this chapter may be made on such terms as the Commission determines to be appropriate.

(b) The Commission shall deduct from any payments awarded under this chapter the amount of any moneys actually received by the applicant from the offender, from any person on behalf of

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the offender, or from any payments under any insurance policy, other than a policy on the victim's life, but including workmen's compensation, for the personal injury or death for which compensation was awarded under this chapter.

(c) The payment of any compensation awarded under this chapter shall be subject to and limited by other outstanding awards under this chapter and the amount of money in the Criminal Victims' Compensation Fund.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 30.

§ 166. Same: Finality and reconsideration; review

(a) Every determination and order of the Commission shall be final, except that an applicant may obtain a reconsideration by the Commission of an order upon filing a written request for reconsideration with the Executive Secretary within one calendar year after the issuance of the order, and upon approval of the request by the Commission.

(b) In the case of an award to or for the benefit of the victim under subdivision (3) of subsection (b), section 163 of this subchapter which is to be paid periodically, depending on the continuing disability of and any wages earned by the victim, the Commission shall review the award at least every two years to determine such continuing disability and wages earned, if any, and to alter such award to accord with any pertinent change in circumstances. The victim shall inform the Commission of any pertinent change in his disability or in his income from wages. If the victim does not inform the Commission as required, his payments may be terminated at the discretion of the Commission.

(c) Neither the right of the applicant to reconsideration nor the obligation of the Commission to review shall affect the finality of a determination and order of the Commission.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 31.

Subchapter IV. Recovery of Compensation

§ 169. Repayment by the applicant

Any applicant who has received payments on an award made by the Commission under this chapter shall pay to the Commission all sums, not to exceed the amount of such payment, which, after the payment on the award, have been received by the applicant from the offender, from any person on behalf of the offender, or from any payments under any insurance policy, other than a life policy, for the personal injury or death for which the award was made under this chapter.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 31.

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1. Generally. Where government was held liable for its own negligence in entrusting revolver to police officer who it should have known was unfit to carry a weapon, its payment of the judgment compensated plaintiff for its own negligence and could not be considered a payment on behalf of the officer within meaning of this section which requires that awards under the chapter be repaid to the government when victim receives a sum from person "on behalf of the offender". *Richards v. Government*, C.A.3d 1978, 16 V.I. 32.

§ 170. Recovery from the offender

(a) In any case where a person is convicted of a crime which was the cause of the injury or death for which compensation has been awarded under this chapter, the Commission may institute an action against such person for the recovery of the whole or any specified part of such compensation actually paid to the applicant under this chapter in any court of competent jurisdiction in the Virgin Islands. Such court shall have jurisdiction to hear, determine, and render judgment in any such action. Any amount recovered and collected which exceeds the amount paid pursuant to the award shall be paid to the applicant.

(b) In any case where payment is made to the Commission under section 169 of this subchapter, the Commission may recover under this section only the difference between such payment and the amount of the compensation awarded under this chapter. The balance of any amount recovered and collected shall be paid to the applicant.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 31.

§ 171. Criminal Victims Compensation Fund

All payments made to the Commission under the provisions of section 169 of this subchapter and all payments made to the Commission on awards granted under the provisions of section 170 of this subchapter shall be covered by the Commission into the Criminal Victims Compensation Fund created and established as a special revolving fund in the Treasury of the Virgin Islands under section 3030 of Title 33 of the Code.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 32.

Subchapter V. Miscellaneous

§ 174. Rules and regulations

The Commission, subject to the approval of the Governor and not inconsistent with law, may adopt, enforce, revise, amend, rescind, or repeal rules and regulations prescribing the administrative and procedural steps to be followed in the filing of applications and during the proceedings under this chapter, and governing other administrative functions and activities of the Commission, of the Executive Secretary, and of any staff members.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 32.

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§ 175. Personnel; budget

Subject to the provisions of chapter 35 of Title 3 of this code, the Commission may employ such personnel as it determines necessary for the effective and efficient administration of its functions and responsibility. Budget needs of the Commission shall be submitted annually to the Legislature as a part of the budget of the Department of Social Welfare.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 32; amended April 23, 1968, No. 2176, § 1(a), Sess. L. 1968, Pt. I, p. 457.

1968—Substituted "Department of Social Welfare" for "Department of Public Welfare".

§ 176. Reports to the Governor and to the Legislature

The Commission shall prepare and transmit to the Governor and to the Legislature annually a report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case, the amount, if any, of compensation awarded, recommendations for appropriate amendments to the law, and an accounting of revenues to and expenditures from the Criminal Victims Compensation Fund with estimates of needs during the next fiscal year.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 33.

§ 177. Penalties

The pertinent provisions of chapter 77 of Title 14 of this code shall apply to every application, statement and document and to all information presented to the Executive Secretary in the application or at the preliminary hearing, or presented to the Commission at the final consideration of an application for compensation under this chapter; and, in addition, whoever, in any matter during a preliminary hearing or a final consideration, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$1,000 or imprisoned for not more than 5 years, or both.—Added March 6, 1968, No. 2111, § 2, Sess. L. 1968, Pt. I, p. 33; amended April 23, 1968, No. 2176, § 1(b), Sess. L. 1968, Pt. I, p. 457.

1968—Substituted "chapter 77" for "chapter 75".

§ 178. Schedule of legal and attorney's fees

(a) In all determinations, awards, or orders by the Commission wherein the sum or amount of the award to a victim or his dependent is less than \$1,000.00, the legal or attorney's fees shall not exceed more than two percent (2%) of the amount of the award.

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(b) In all determinations, awards or orders by the Commission wherein the sum or amount of the award to a victim or his dependents, is more than \$1,000.00, the legal or attorney's fees shall not exceed five percent (5%) of said award.

(c) In all other determinations, awards or orders by the Commission not covered in the above subsections, the amount of the legal or attorney's fees shall be determined by either a majority of the members of the Commission or by the sole determination of the Commission's executive secretary.—Added Sept. 6, 1978, No. 4195, § 1(i), Sess. L. 1978, p. 214.

Chapter 9. Vocational Rehabilitation

SECTION ANALYSIS

- 251. Purpose
- 252. Definitions
- 253. Administration of program
- 254. Powers and duties of the Department of Social Welfare
- 255. Receipt and disbursement of Federal funds
- 256. Gifts
- 257. Eligibility for services
- 258. Assignability of maintenance rights
- 259. Hearing for aggrieved person
- 260. Misuse of records and information
- 261. Limitation on political activity

§ 251. Purpose

It is the purpose of the Virgin Islands to provide vocational rehabilitation services to physically handicapped individuals of the Virgin Islands so that they may prepare for and engage in useful and remunerative occupations to the extent of their capabilities, thus increasing their social and economic well-being and the productive capacity of the Virgin Islands and reducing the burden of dependency on families and taxpayers.—Added Nov. 19, 1969, No. 2598, § 1(b), Sess. L. 1969, p. 404.

Transfer of functions, personnel, etc. Act Nov. 19, 1969, No. 2598, § 4, Sess. L. 1969, p. 410, provided:

* * *

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ACT. NO. 4679

BILL No. 14-0314

FOURTEENTH LEGISLATURE OF THE VIRGIN ISLANDS

OF THE UNITED STATES

Regular Session

1982

APPROVED
FEB 4 - 1982

To amend Chapter 7 of Title 34, Virgin Islands Code, to increase maximum awards under the Criminal Victims Compensation Act

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BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. Chapter 7 of Title 34, Virgin Islands Code, is hereby amended in the following instances:

(a) In paragraph 1 of subsection (b), Section 163, strike the words "one thousand five hundred dollars (\$1,500)" and insert in lieu thereof the words "two thousand five hundred dollars (\$2,500)".

(b) In paragraph (2) of subsection (b), Section 163, strike the words "one thousand five hundred dollars (\$1,500)" and insert in lieu thereof the words "two thousand five hundred dollars (\$2,500)".

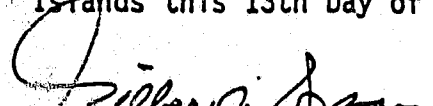
(c) In subparagraph (B) of paragraph (3), subsection (b), Section 163, strike the words "five hundred dollars (\$500)" and insert in lieu thereof the words "one thousand dollars (\$1,000)".


(d) In paragraph (4) of subsection (b), Section 163, strike the words "ten thousand dollars (\$10,000)" and insert in lieu thereof the words "twenty thousand dollars (\$20,000)" and strike the words "two thousand five hundred dollars (\$2,500)" and insert in lieu thereof the words "five thousand dollars (\$5,000)".

(3) In subsection (a) of Section 164, strike the figure "\$15,000" and insert in lieu thereof the figure "\$25,000".

Thus passed by the Legislature of the Virgin Islands on January 13, 1982.

Witness our Hands and the Seal of the Legislature of the Virgin Islands this 13th Day of January, A. D., 1982.


GILBERT A. SPRAUVE
Acting President


RUBY SIMMONDS
Legislative Secretary

VIRGIN ISLANDS

Title 5

Chapter 313. Probation

NEW SECTIONS

3712. Probation for youthful offenders

3713-3719. [Reserved]

§ 3711. Suspension of sentence and probation

(a) [*Judgment of conviction.*] Upon entering a judgment of conviction of any offense against the laws of the Virgin Islands not punishable by life imprisonment, the district court or a territorial court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best.

Upon entering a judgment of conviction of any offense against the laws of the Virgin Islands not punishable by life imprisonment, if the maximum punishment provided for such offense is more than six months, the district court or a territorial court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may impose a sentence in excess of six months and provide that the defendant be confined in a jail-type institution or a treatment institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the defendant placed on probation for such period and upon such terms and conditions as the court deems best.

Probation may be granted whether the offense is punishable by fine or imprisonment or both. If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or informations, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

The court may revoke or modify any condition of probation, or may change the period of probation.

The period of probation, together with any extension thereof, shall not exceed five years.

While on probation and among the conditions thereof, the defendant—

May be required to pay a fine in one or several sums; and

May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and

May be required to provide for the support of any persons, for whose support he is legally responsible.

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The defendant's liability for any fine or other punishment imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation.

(b) [*Probation after conviction.*] In the event a defendant placed on probation after conviction of any offense under the laws of the Virgin Islands, is convicted of a crime of violence, as defined in Title 23, section 451(e) of the code, the court shall forthwith revoke such probation, rescind the order suspending execution of the underlying sentence and direct the incarceration of such defendant for the full term of such sentence without credit for time spent on probation.

(c) *Probation without conviction.*

(1) Upon finding of guilty or upon receipt of a verdict of guilty or plea of guilty wherein the alleged offense did not result in the personal injury or death of any person and where no deadly weapon was used in perpetrating the crime, the court may, without entering a judgment of guilty or accepting the plea and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such terms and conditions as it may require; Provided, the accused has never been convicted of a misdemeanor or felony in this jurisdiction or under the laws of the United States, any state or territory thereof, or foreign jurisdiction. Upon fulfillment of the terms of probation the defendant shall be discharged without court adjudication of guilt, and an order shall be entered expunging the finding, verdict or plea of guilty as the case may be. Upon violation of the terms of probation the court may enter an adjudication of guilt and proceed to impose a fine or imprisonment, or both as provided by law.

(2) A defendant sentenced under this subsection may also be ordered to make restitution to the victim of the crime, for any money or property loss or compensation for actual monetary damages directly resulting from the crime, either as a condition of probation or as an order joined with the sentence. If restitution is not paid as ordered, a civil judgment may be entered for the unpaid amount.—Amended Oct. 20, 1972, No. 3313, Sess. L. 1972, p. 459; March 29, 1974, No. 3549, Sess. L. 1974, p. 76.

Title 5

§ 660. Compensation and expenses of witness

A witness attending in the district court of the Virgin Islands, or before a district court commissioner, or before any person authorized to take his deposition pursuant to any rule or order of court, shall receive \$4 for each day's attendance and for the time

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necessarily occupied in going to and returning from the same, and shall be reimbursed for his necessary and reasonable expenses of travel in going from and returning to his place of residence.

A witness who is not a salaried employee of the Virgin Islands or Federal government and who is not in custody and who is required to attend, as herein described, in a judicial division in which he does not reside, shall be entitled to an additional allowance of \$8 per day for subsistence including the time necessarily occupied in going to and returning from the place of attendance.—Amended May 16, 1957, No. 160, § 27, Sess. L. 1957, p. 27.

Chapter 337. Disposal of Property Stolen or Embezzled

SECTION ANALYSIS

- 3941. Custody by peace officer
- 3942. Delivery to owner
- 3943. Failure to file charge
- 3944. Scope of order; rights of third persons
- 3945. Money or property taken from arrested person
- 3946. Unclaimed property

§ 3941. Custody by peace officer

When property alleged to have been stolen or embezzled comes into the custody of a peace officer, he shall hold it subject to the order of the court as provided in this chapter.

HISTORY

Revision note. Based on 1921 Codes, Title V, ch. 28, § 1.
Changes were made in phraseology.

§ 3942. Delivery to owner

On satisfactory proof of title of the owner of the property, the court which hears the charge must order it to be delivered to the owner or his duly authorized agent, on his paying the reasonable and necessary expenses incurred in its preservation, to be ascertained and certified by the court.

HISTORY

Revision note. Based on 1921 Codes, Title V, ch. 28, § 2.
Changes were made in phraseology.

§ 3943. Failure to file charge

If no charge is filed against any person in relation to property alleged to have been stolen or embezzled, the judge who examines the charge against the person accused of the crime shall order

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it to be delivered to the owner or his duly authorized agent on like proof and condition as in section 3942 of this title.

HISTORY

Revision note. Based on 1921 Codes, Title V, ch. 28, § 3.
Word "magistrate" was changed to "judge". See section 3504 of this title.
Changes were made in phraseology.

§ 3944. Scope of order; rights of third persons

The order provided for in sections 3942 and 3943 of this title entitles the owner or his agent to demand and receive the possession of the property from the officer having it in custody, and authorizes such officer to deliver it accordingly, but does not affect the rights of third persons.

HISTORY

Revision note. Based on 1921 Codes, Title V, ch. 28, § 4.
Changes were made in phraseology.

§ 3945. Money or property taken from arrested person

When money or other property is taken from a person arrested upon a charge of crime, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money or kind of property taken, one of which receipts he shall deliver to the person arrested and the other to the judge who examines the charge; or if the arrest is made after an information has been filed then to the clerk of the district court.

HISTORY

Revision note. Based on 1921 Codes, Title V, ch. 28, § 5.
Changes were made in phraseology.

§ 3946. Unclaimed property

If the property stolen or embezzled is not claimed by the owner before the expiration of one year from the conviction of the person for stealing or embezzling it, and after publication, the officer having it in custody shall, if it is money, pay it to the clerk of the district court, or if it is property, sell it as upon execution, and after paying the expenses of the sale and preservation of the property to be ascertained and certified by the clerk of the district court pay the proceeds to the clerk of the district court, to be deposited by him as in case of moneys collected upon judgments in favor of the government of the Virgin Islands.

HISTORY

Revision note. Based on 1921 Codes, Title V, ch. 28, § 6.
Under the 1921 Codes, the time limit was 60 days in St. Croix and one year in St. Thomas and St. John. This section adopts the longer period.
"Municipality" was changed to "government of the Virgin Islands".
Changes were made in phraseology.

Category	Citation
1. Victim Compensation Program	19.2-368.1 et seq.
1.1 Responsible Agency	19.2-368.3
1.2 Eligible Claimants	19.2-368.4
1.3 Losses Covered	19.2-368.11
1.4 Minimum and Maximum Award	19.2-368.11
1.5 Required to Show Financial Need	19.2-368.13
1.6 Required to Report Crime - Time Limit	19.2-368.10
1.7 Filing of Claim - Time Limit	19.2-368.5(B)
1.8 Emergency Award	19.2-368.9
1.9 Funding	19.2-368.18
2. Restitution	
2.1 Sentencing Option	19.2-305
2.2 Mandatory Condition of Probation	19.2-305.1 (for offense causing property damage)
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	14.1-189 et seq.
5. Victim's Bill of Rights	
6. Protection from Intimidation	
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CHAPTER 21.1.

COMPENSATING VICTIMS OF CRIME.

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§ 19.2-368.1. Findings; legislative intent. — The General Assembly finds that many innocent persons suffer personal physical injury or death as a result of criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit crimes. Such persons or their dependents may thereby suffer disability, incur financial hardships or become dependent upon public assistance. The General Assembly finds and determines that there is a need for governmental financial assistance for such victims of crime. Therefore, it is the intent of the General Assembly that aid, care and support be provided by the Commonwealth as a matter of moral responsibility for such victims of crime. (1976, c. 605.)

Law Reviews. — For survey of Virginia criminal law for the year 1975-1976, see 62 Va. L. Rev. 1400 (1976). For article discussing victims' rights litigation, see 11 U. Rich. L. Rev. 447 (1977). For a discussion of the elements of compensation and restitution in this chapter,

see 11 U. Rich. L. Rev. 679 (1977). For survey of Virginia criminal law for the year 1977-1978, see 64 Va. L. Rev. 1407 (1978). For article, "Victimology and Mental Health Law: An Agenda," see 66 Va. L. Rev. 681 (1980).

§ 19.2-368.2. Definitions. — For the purpose of this chapter:

1. "Commission" shall mean the Industrial Commission of Virginia.
2. "Claimant" shall mean the person filing a claim pursuant to this chapter.
3. "Crime" shall mean an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law; provided, however, that no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries were intentionally inflicted through the use of such vehicle.
4. "Family," when used with reference to a person, shall mean (1) any person related to such person within the third degree of consanguinity or affinity, (2) any person residing in the same household with such person.
5. "Victim" shall mean a person who suffers personal physical injury or death as a direct result of a crime. (1976, c. 605.)

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§ 19.2-368.3. Powers and duties of Commission. — The Commission shall have the following powers and duties in the administration of the provisions of this chapter:

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter.
2. To acquire from the Commonwealth's attorneys, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigation and information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury.
3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to reinvestigate or reopen cases as the Commission deems necessary.
4. To require and direct medical examination of victims.
5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summons requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Commission to any member or employee thereof.
6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.
7. To render each year to the Governor and to the General Assembly a written report of its activities. (1976, c. 605.)

Law Review. — For survey of Virginia criminal law for the year 1975-1976, see 62 Va. L. Rev. 1400 (1976).

§ 19.2-368.4. Persons eligible for awards. — A. Except as provided in subsection B of this section, the following persons shall be eligible for awards pursuant to this chapter:

1. A victim of a crime.
2. A surviving spouse or child, including posthumous children, of a victim of a crime who died as a direct result of such crime.
3. Any person, except a law-enforcement officer engaged in the performance of his duties, who is injured or killed while trying to prevent a crime or an attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.
4. A surviving spouse or child, including posthumous children, of any person who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.
5. Any other person legally dependent for his principal support upon a victim of crime who dies as a result of such crime, or legally dependent for his principal support upon any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

B. A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, or a member of the family of such persons shall not be eligible to receive an award with respect to such claim.

C. A claimant, to recover under this chapter, shall be at the time of the injury a resident of this Commonwealth, or resident of a state which has enacted laws similar to this chapter affording rights of recovery to Virginia residents, or a full-time student at a college or university located within the Commonwealth.

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§ 19.2-368.5. Filing of claims; deferral of proceedings. — A. A claim may be filed by a person eligible to receive an award, as provided in § 19.2-368.4, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is mentally incompetent, the claim may be filed on his behalf by his guardian or such other individual authorized to administer his estate.

B. A claim must be filed by the claimant not later than 180 days after the occurrence of the crime upon which such claim is based, or not later than 180 days after the death of the victim; provided, however, that upon good cause shown, the Commission may extend the time for filing for a period not exceeding, under any circumstances, 2 years after such occurrence.

C. Claims shall be filed in the office of the Commission in person or by mail. The Commission shall accept for filing all claims submitted by persons eligible under subsection A of this section and alleging the jurisdictional requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the Commission.

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the Commonwealth's attorney of the jurisdiction wherein the crime is alleged to have occurred. If, within ten days after such notification, the Commonwealth's attorney so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded in the circuit court unless notification is received from the Commonwealth's attorney that no objection is made to a continuation of the investigation and determination of the claim. When such criminal prosecution has been concluded in the circuit court the Commonwealth's attorney shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority of the Commission to grant emergency awards as hereinafter provided. (1976, c. 605; 1977, c. 215; 1978, c. 122.)

§ 19.2-368.5:1. Failure to perfect claim; denial. — Notwithstanding the provisions of § 19.2-368.5, if, following the initial filing of a claim, a claimant fails to take such further steps to support or perfect the claim as may be required by the Commission within ninety days after written notice of such requirement is sent by the Commission to the claimant, the claimant shall be deemed in default. If the claimant is in default, the Commission shall notify the claimant that the claim is denied and the claimant shall be forever barred from reasserting it; however, the Commission may reopen the proceeding upon a showing by claimant that the failure to do the acts required by the Commission was beyond the control of the claimant. (1981, c. 302.)

§ 19.2-368.6. Assignment of claims; investigation; hearing; confidentiality of records; decisions. — A. A claim, when accepted for filing, shall be properly investigated, and, if necessary, assigned by the chairman to a commissioner, deputy commissioner or other proper party for disposition. All claims arising from the death of an individual shall be considered together by the same person.

B. The person to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and official records and reports concerning the crime, and an examination of medical and hospital reports relating to the injury upon which the claim is based.

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C. Claims shall be investigated and determined, 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 a lack of criminal responsibility or other legal exemption.

D. The person to whom a claim is assigned may decide the claim in favor of a claimant on the basis of the papers filed in support thereof and the report of the investigation of the claim. If he is unable to decide the claim, upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible.

E. Confidentiality provided for by law applicable to a claimant's or victim's juvenile court records is not applicable in proceedings under this chapter.

F. After examining the papers filed in support of the claim, and the report of investigation, and after a hearing, if any, a decision shall be made either granting an award pursuant to § 19.2-368.11 of this chapter or denying the claim.

G. The person making a decision shall issue a written report setting forth such decision and his reasons therefor, and shall notify the claimant and furnish him a copy of such report. (1976, c. 605; 1977, c. 215.)

§ 19.2-368.7. Review by Commission. — A. The claimant may, within fifteen days from the date of the report make an application, in writing, to the Commission for consideration of the decision by the full Commission as provided by § 65.1-97.

B. Upon receipt of an application pursuant to subsection A of this section, or upon its own motion, the Commission shall review the record and affirm or modify the decision of the person to whom the claim was assigned. The action of the Commission in affirming or modifying such decision shall be final. If the Commission receives no application pursuant to subsection A of this section, or takes no action upon its own motion, the decision of the person to whom the claim was assigned shall become the final decision of the Commission.

C. The Commission shall promptly notify the claimant and the Comptroller of the final decision of the Commission and furnish each with a copy of the report setting forth the decision. (1976, c. 605; 1977, c. 215.)

§ 19.2-368.8. Reinvestigation of decision; reconsideration of award; judicial review. — A. The Commission, on its own motion, or upon request of the claimant, may reinvestigate or reopen a decision making or denying an award. Under no circumstances shall the Commission reopen or reinvestigate a case after the expiration of two years from the date of occurrence of the crime upon which the claim is based.

B. The Commission shall reconsider, at least annually, every award upon which periodic payments are being made. An order or reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud. The right of reconsideration does not affect the finality of a Commission decision for the purposes of judicial review.

C. Within thirty days of the date of the report containing the final decision of the Commission, the claimant may, if in his judgment the award is improper, appeal such decision to the Supreme Court of Virginia, as provided in § 65.1-98. The Attorney General may appear in such proceedings as counsel for the Commission. (1976, c. 605; 1977, c. 215.)

§ 19.2-368.9. Emergency awards. — Notwithstanding any other provisions of this chapter, if it appears to the Commission, that (1) such claim is one with respect to which an award probably will be made, and (2) undue hardship will result to the claimant if immediate payment is not made, the Commission

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may make an emergency award to the claimant, pending a final decision in the case, provided, however, that (i) the amount of such emergency award shall not exceed \$1,000, (ii) the amount of such emergency award shall be deducted from any final award made to the claimant, and (iii) the excess of the amount of such emergency award over the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the Commission. (1976, c. 605; 1977, c. 215.)

§ 19.2-368.10. When awards to be made. — No award shall be made unless the Commission finds that (1) a crime was committed, (2) such crime directly resulted in personal physical injury to, or death of the victim, and (3) police records show that such crime was promptly reported to the proper authorities, and in no case may an award be made where the police records show that such report was made more than forty-eight hours after the occurrence of such crime, unless the Commission, for good cause shown, finds the delay to have been justified. The Commission, upon finding that any claimant or award recipient has not fully cooperated with all law-enforcement agencies, may deny, reduce or withdraw any award, as the case may be. (1976, c. 605; 1977, c. 215.)

Law Review. — For survey of Virginia criminal law for the year 1975-1976, see 62 Va. L. Rev. 1400 (1976).

§ 19.2-368.11. Amount of award. — A. Any award made pursuant to this chapter for loss of earnings shall be made in accordance with the schedule of benefits and degree of disability as specified in §§ 65.1-54 through 65.1-56 and 65.1-65 of the Code of Virginia. If a claimant does not have "average weekly wages," the award shall be in an amount equal to the arithmetic average between the maximum and minimum awards listed in the applicable portion of these sections.

B. Awards may also be made on claims, or portions of claims, for (1) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (2) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, but for the benefit of himself and his family, if he had not been a victim of crime; (3) expenses in any way related to funeral or burial, not to exceed \$1,500; (4) expenses attributable to pregnancy resulting from forcible rape; (5) any other reasonable and necessary expenses or indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically covered herein, based on the claimant's actual out-of-pocket loss for such expenses, which in the discretion of the Commission are appropriate. Such award shall be subject to a deduction of \$100 from any and all losses, and such award shall not exceed \$12,500 in the aggregate. An award to a person sixty-five years of age or older shall not be subject to any deduction. (1976, c. 605; 1977, c. 215.)

§ 19.2-368.12. Awards not subject to execution or attachment; apportionment; reductions. — A. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

B. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned among the claimants.

C. Any award made pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury (1) from or on behalf of the person who committed the crime, (2) from any other public or private source, including an award of the Commission as an emergency award pursuant to § 19.2-368.9 of this chapter.

D. In determining the amount of an award, the Commission shall determine whether, because of his conduct, the victim of such crime contributed to the

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infliction of his injury, and the Commission shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the Commission may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility 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. (1976, c. 605; 1977, c. 215.)

Law Review. — For an article on the need for reform of and a proposed revision of Virginia's Exemption Statutes, see 37 Wash. & Lee L. Rev. 127 (1980).

§ 19.2-368.13. Denial of award. — If the Commission finds that the claimant will not suffer undue financial hardship, if not granted financial assistance pursuant to this chapter, the Commission shall deny an award. A claimant suffers undue financial hardship only if he cannot maintain his customary level of health, safety and education for himself and his dependents. In making such a finding of undue financial hardship, the Commission shall consider all relevant factors, including but not limited to, (1) the number of claimant's dependents, (2) the usual and ordinary living expenses of the claimant and his family, (3) any special needs of the claimant and his dependents, (4) the claimant's income and potential earning capacity, and (5) the claimant's resources. (1976, c. 605; 1977, c. 215.)

Law Review. — For survey of Virginia criminal law for the year 1975-1976, see 62 Va. L. Rev. 1400 (1976). For article discussing victims' rights litigation, see 11 U. Rich. L. Rev. 447 (1977).

§ 19.2-368.14. Public record; exception. — The record of any proceedings under this chapter shall be a public record; provided, however, 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. (1976, c. 605.)

§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; disposition of funds collected. — Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the extent of such 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 with respect to which the award is made. However, the Commonwealth shall not institute any proceedings in connection with its right of subrogation under this section within one year from the date of commission of the crime, unless any claimant or victim's right or action shall have been previously terminated. All funds collected by the Commonwealth in a proceeding instituted pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries Compensation Fund. (1976, c. 605; 1983, c. 227.)

The 1983 amendment split the former first sentence into the present first and second sentences, by substituting "However" for "provided, however" at the beginning of the second sentence, substituted "accruing" for "occurring" in the first sentence, and added the third sentence.

§ 19.2-368.16. Claims to be made under oath. — All claims shall be made under oath. Any person who asserts a false claim under the provisions of this chapter shall be guilty of perjury and, in addition, shall be subject to prosecution.

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tion under the provisions of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 of the Code of Virginia, and shall further forfeit any benefit received and shall reimburse and repay the Commonwealth for payments received or paid on his behalf pursuant to any of the provisions hereunder. (1976, c. 605.)

§ 19.2-368.17. Public information program. — The Commission shall establish and conduct a public information program to assure extensive and continuing publicity and public awareness of the provisions of this chapter, and the right to compensation for innocent victims of crime, including information on the right to file a claim, the scope of coverage, and the procedures to be utilized incident thereto. (1976, c. 605.)

§ 19.2-368.18. Criminal Injuries Compensation Fund. — A. There is hereby created a special fund to be administered by the Comptroller, known as the Criminal Injuries Compensation Fund.

B. Where any person is convicted, after July 1, 1976, of any crime of treason, felony, or of any offense punishable as a Class 1 or Class 2 misdemeanor under Title 18.2, except a violation of Article 2 (§ 18.2-266 et seq.), Chapter 7, of Title 18.2 or drunkenness or disorderly conduct, by any court with criminal jurisdiction, there shall be imposed an additional cost, in the case, in addition to any other costs required to be imposed by law, of the sum of fifteen dollars. Such additional sum shall be paid over to the Comptroller to be deposited into the Criminal Injuries Compensation Fund. Under no condition shall a political subdivision be held liable for the payment of this sum.

C. No claim shall be accepted under the provisions of this chapter when the crime which gave rise to such claim occurred prior to July 1, 1977.

D. Sums available in the Criminal Injuries Compensation Fund shall be used for the purpose of payment of the costs and expenses necessary for the administration of this chapter and for the payment of claims pursuant to this chapter.

E. No claim shall be accepted by the Commission under this chapter until July 1, 1977. Payment of claims under this chapter shall be limited to the funds available in the Criminal Injuries Compensation Fund as collected during the preceding fiscal year and any funds remaining unawarded from any prior fiscal year. (1976, c. 605; 1978, c. 413; 1980, c. 521.)

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§ 19.2-305. Requiring fines, costs, restitution for damages or support from probationer. — While on probation the defendant may be required to pay in one or several sums a fine or costs, or both such fine and costs, imposed at the time of being placed on probation as a condition of such probation, and the failure of the defendant to pay such fine or costs, or both such fine and costs, at the prescribed time or times may be deemed a breach of such probation. Such defendant may be required to make restitution or reparation to the aggrieved party or parties for damages or loss caused by the offense for which conviction was had, or may be required to provide for the support of his wife or others for whose support he may be legally responsible. Such defendant may submit a proposal to the court for making restitution or to provide for support. (Code 1950, § 53-274; 1962, c. 143; 1975, c. 495; 1977, c. 682; 1978, c. 716.)

* * *

§ 19.2-305.1. Restitution for property damage or loss. — A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, except the provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, on or after July 1, 1977, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. If the court suspends a portion of any sentence imposed, it may order that restitution shall commence upon the release of such person.

C. At the time of sentencing, the court, in its discretion, shall determine the amount to be repaid by the defendant and the terms and conditions thereof. The court shall include such findings in the judgment order. The order may specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct.

D. Unreasonable failure to execute the plan by the defendant shall result in revocation of the probation or imposition of the suspended sentence. A hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken. (1977, c. 682; 1978, c. 131; 1981, c. 224.)

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§ 14.1-189. Allowances to witnesses for Commonwealth. — All witnesses summoned for the Commonwealth shall be entitled to receive for each day's attendance all necessary ferrriage and tolls, and such reimbursement for his daily mileage as prescribed in § 14.1-5. All allowances to witnesses summoned on behalf of the Commonwealth shall be paid by the treasurer of the county or corporation in which the trial is had or in which the grand jury is summoned and the amount so paid by such treasurer shall be refunded to him out of the State treasury, on a certificate of the clerk of the court in which the trial was had or before which the grand jury was summoned. (Code 1950, § 14-186; 1954, c. 709; 1964, c. 386; 1972, c. 719; 1976, c. 308; 1977, c. 483.)

The 1977 amendment deleted "one dollar" following "each day's attendance" in the first sentence.

§ 14.1-190. Allowances to other witnesses. — A person attending as a witness under a summons not covered by § 14.1-189, whether he be a witness from within or without the State, shall be reimbursed for his daily mileage as prescribed in § 14.1-5, and expenses for the tolls at the bridges and ferries which he crosses or turnpike gates he may pass. On his oath an entry of the sum he is entitled to and for what and by what party it is to be paid shall be made: (1) when the attendance is before either house or a committee of the General Assembly by the clerk of such house or committee and (2) in other cases by the clerk of the court in which the case is or the person before whom the witness attended except that when the attendance was on behalf of the Commonwealth before a court the entry shall be made upon the minutes of the court in which the case is or to whose clerk the certificates mentioned in § 19.2-345 are transmitted. A witness from without the State in any civil action may be allowed the same mileage and attendance fee as any other witness in any such action; provided, that no such sums for attendance and mileage shall be allowed a witness from without the State, in any civil action, unless the judge of the court shall determine and certify such witness to be a material witness in the matter for which he appeared; and the court may allow such mileage and attendance fee or any portion thereof as the court may determine to be reasonable under the circumstances of the case. A witness summoned to attend in several cases may have the entry made against either of the parties by whom he is summoned, but no witness shall be allowed for his attendance in more than one case at the same time. Every witness who qualifies as an expert witness, when compelled to attend and testify, shall be allowed such compensation and mileage as the court may, if requested in its discretion, order without regard to any limitation above set forth, but the same shall be paid by the party in whose behalf he shall testify. (Code 1950, § 14-187; 1952, c. 701; 1954, c. 709; 1962, c. 227; 1964, c. 386;

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§ 14.1-195. Number of witnesses paid fees in criminal cases. — Not more than the maximum number of witnesses provided for herein shall be paid out of the State treasury in criminal cases:

The maximum number that may be recognized by any justice of the peace to go before the grand jury in any one case — three.

The maximum number that may be caused to be summoned by a Commonwealth's attorney in any one case to go before a grand jury — five.

The maximum number that may be used before a court not of record in the trial of any criminal case — five.

The maximum number that may be caused to be summoned by a Commonwealth's attorney for the trial of any criminal case — ten.

Provided, that nothing herein shall be construed to limit the number of witnesses that may be authorized by any court or the judge thereof in vacation to be used when the necessity for additional witnesses is made to appear to the court or the judge thereof and the consent of the court or the judge thereof in vacation is first obtained, or to limit the number of witnesses that a grand jury may of its own motion cause to be summoned. (Code 1950, § 14-192; 1964, c. 386.)

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§ 18.2-460. Obstructing justice by threats or force. — If any person, by threats, or force, attempt to intimidate or impede a judge, magistrate, justice, juror, witness, or an officer of a court, or any law-enforcement officer, in the discharge of his duty, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of a Class 1 misdemeanor. (Code 1950, § 18.1-310; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 269.)

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§ 19.2-299.1. When Victim Impact Statement required; contents; uses. — The presentence report prepared pursuant to § 19.2-299 may, in the discretion of the court, include a Victim Impact Statement, in any case in which the court determines that the defendant, in committing the felony for which he has been convicted, caused significant physical, psychological or economic injury to the victim.

A Victim Impact Statement shall (i) identify the victim, (ii) itemize any economic loss suffered by the victim as a result of the offense, (iii) identify the nature and extent of any physical or psychological injury suffered by the victim as a result of the offense, (iv) detail any change in the victim's personal welfare, lifestyle or familial relationships as a result of the offense, (v) identify any request for psychological or medical services initiated by the victim or the victim's family as a result of the offense, and (vi) provide such other information as the court may require related to the impact of the offense upon the victim.

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If the court does not order a presentence investigation and report, the Commonwealth's attorney may prepare a Victim Impact Statement. The Victim Impact Statement may be considered by the court in determining the appropriate sentence. A copy of the statement prepared pursuant to this section shall be made available to the defendant or counsel for the defendant without court order at least seven days prior to the sentencing hearing. The statement shall not be admissible in any civil proceeding for damages arising out of the acts upon which the conviction was based. The statement, however, may be utilized by the Industrial Commission in its determinations on claims by victims of crimes pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title.

* * *

§ 19.2-270.1. Use of photographs as evidence in certain larceny prosecutions. — In any prosecution for larceny under the provisions of § 18.2-95 or § 18.2-96, or for shoplifting under the provisions of § 18.2-103, photographs of the goods or merchandise alleged to have been taken or converted shall be deemed competent evidence of such goods or merchandise and shall be admissible in any proceeding, hearing or trial of the case to the same extent as if such goods and merchandise had been introduced as evidence. Such photographs shall bear a written description of the goods or merchandise alleged to have been taken or converted, the name of the owner of such goods or merchandise, or the store or establishment wherein the alleged offense occurred, the name of the accused, the name of the arresting police officer or conservator of the peace, the date of the photograph and the name of the photographer. Such writing shall be made under oath by the arresting police officer or conservator of the peace, and the photographs identified by the signature of the photographer. Upon the filing of such photograph and writing with the police authority or court holding such goods and merchandise as evidence, such goods or merchandise shall be returned to their owner, or the proprietor or manager of the store or establishment wherein the alleged offense occurred. (1976, c. 577.)

Law Review. — For survey of Virginia tort law for the year 1975-1976, see 62 Va. L. Rev. 1459 (1976).

§ 19.2-270.2. Disposition of money, securities or documents seized upon arrest, etc., and pertinent as evidence. — When in the course of investigation or arrest, the investigating or arresting officer shall seize or come into the possession of moneys, cash, or negotiable or nonnegotiable instruments or securities, hereinafter called "moneys or securities," taken or retained unlawfully from a financial institution or other person, and such moneys or securities, or a portion thereof, shall be pertinent evidence in a pending prosecution or appeal therefrom, the officer or agency having possession thereof, may retain, pending such prosecution or appeal thereof, sufficient of such moneys or securities as shall be necessary to prove the crime of grand larceny or other crimes requiring a specific amount in value.

* * *

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§ 63.1-55.1. Protective services for aged and infirm persons. — Each local board, to the extent that federal or state matching funds are made available to each locality, shall provide, subject to supervision of the Commissioner and in accordance with rules prescribed by the State Board, protective services for persons who by reason of advanced age, impaired health, or physical disability cannot, unaided, take care of themselves or their affairs and have no relative or other person able, available and willing to provide guidance, supervision or other needed care and for persons sixty years of age and older who are abused, neglected or exploited. The requirement to provide such services shall not limit the right of any individual to refuse to accept any of the services so offered, except as provided in § 63.1-55.5. (1974, c. 329; 1977, c. 547; 1978, c. 749; 1983, c. 604.)

§ 63.1-55.1:1. Authority to provide adult foster home services. — Each local board is authorized to provide adult foster home services which may include recruitment, approval and supervision in accordance with rules and regulations adopted by the State Board of Welfare. (1978, c. 180.)

§ 63.1-55.2. Protection of aged or incapacitated adults; definitions. — As used in §§ 63.1-55.3 through 63.1-55.7:

"**Abuse**" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement.

"**Adult**" means any person eighteen years of age and older who is incapacitated and any qualifying person sixty years of age and older, who, in either case, both of whom reside in the Commonwealth; provided, however, "adult" may include incapacitated or qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.

"**Director**" means the director or his delegated representative of the department of public welfare or social services of the city or county in which the person resides or is found.

"**Emergency**" means that an adult is living in conditions which present a clear and substantial risk of death or immediate and serious physical harm to himself or others.

"**Exploitation**" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"**Incapacitated person**" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out responsible decisions concerning his or her well-being.

"**Neglect**" means that an adult is living under such circumstance that he is not able to provide for himself or is not being provided such services as are necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.

"**Protective services**" means services provided by the local department of public welfare or social services which are necessary to prevent abuse, neglect or exploitation of an adult. (1977, c. 547; 1978, c. 749.)

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§ 63.1-55.3. Same; physician, nurses, etc., to report abuse, neglect or exploitation of adults; complaints by others. — A. Any person licensed to practice medicine or any of the healing arts, any hospital resident or intern, any person employed in the nursing profession, any person employed as a social worker, any mental health professional and any law-enforcement officer, in his professional or official capacity, who has reason to suspect that an adult is an abused, neglected or exploited adult, shall report the matter immediately to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred. If neither locality is known, then such report shall be made to the local department of the county or city where the abuse, neglect, exploitation was discovered. If the information is received by a staff member, resident, intern or nurse in the course of professional services in a hospital or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith. The initial report may be an oral report but such report shall be reduced to writing within seventy-two hours by the director of the local department on a form prescribed by the State Board of Welfare.

B. Any person who suspects that an adult is an abused, neglected or exploited adult may report the matter to the local department of the county or city wherein the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred. Such a complaint may be oral or in writing.

C. Any person who makes a report pursuant to subsections A or B of this section or who testifies in any judicial proceeding arising from the report shall be immune from any civil or criminal liability on account of such report or testimony, unless such person acted in bad faith or with a malicious purpose.

§ 63.1-55.4. Protection of aged or incapacitated adults; duty of director upon receiving report; confidentiality. — Any director of a department of social services or public welfare who receives a report that a person is in need of protective services shall make a prompt and thorough investigation to determine whether the person is in need of protective services and what services are needed. The investigation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. After completing the investigation, the director shall make a written report of the case indicating whether he believes protective services are needed. If a report that a person is in need of protective services is unfounded, the director shall notify the individual making the report of this determination. If the director determines that the adult needs protective services according to the criteria set forth in § 63.1-55.6 A, the director may petition the circuit court for an emergency order for protective services pursuant to § 63.1-55.6.

All reports, documentary evidence, and other information received or maintained by the director pursuant to this section shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.) of the Code. Appropriate disclosure of nonidentifying information may be made in accordance with regulations of the Department. (1977, c. 547; 1981, c. 456;

§ 63.1-55.5. Same; involuntary protective services. — A. If an adult lacks the capacity to consent to receive protective services, these services may be ordered by a court on an involuntary basis through an emergency order pursuant to § 63.1-55.6 or through the appointment of a guardian pursuant to § 37.1-128.1 or 37.1-132.

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B. In ordering involuntary protective services, the court shall authorize only that intervention which it finds to be least restrictive of the adult's liberty and rights, while consistent with his welfare and safety. The basis for such finding shall be stated in the record by the court.

C. The adult shall not be required to pay for involuntary protective services, unless such payment is authorized by the court upon a showing that the person is financially able to pay. In such event the court shall provide for reimbursement of the actual costs incurred by the local department in providing protective services to the adult, excluding administrative costs. (1977, c. 547; 1978, c. 562; 1979, c. 451.)

The 1979 amendment substituted "§ 37.1-128.1" for "§ 37.1-128.01" near the end of subsection A.

Law Review. — For survey of Virginia law on governmental services and social welfare for the year 1976-77, see 63 Va. L. Rev. 1440 (1977).

§ 63.1-55.6. Same; emergency order for protective services. — A. Upon petition by the local department of social services or public welfare to the circuit court, the court may issue an order authorizing the provision of protective services on an emergency basis to an adult after finding on the record, based on a greater weight of the evidence, that:

1. The adult is incapacitated; and
2. An emergency exists; and
3. The adult lacks the capacity to consent to receive protective services; and
4. The proposed order is substantially supported by the findings of the local department of social services or public welfare which has investigated the case, or if not so supported, there are compelling reasons for ordering services.

B. In issuing an emergency order, the court shall adhere to the following limitations:

1. Only such protective services as are necessary to improve or correct the conditions creating the emergency shall be ordered, and the court shall designate the approved services in its order. In ordering protective services the court shall consider the right of a person to rely on nonmedical remedial treatment in accordance with a recognized religious method of healing in lieu of medical care.

2. The court shall specifically find in the emergency order whether hospitalization or a change of residence is necessary. Approval of the hospitalization or change of residence shall be stated in the order. No person may be committed to a mental health facility under this section.

3. Protective services may be provided through an appropriate court order only for a period of five days. The original order may be renewed once for a five-day period upon a showing to the court that continuation of the original order is necessary to remove the emergency.

4. In its order the court shall appoint the petitioner or another interested person, as temporary guardian of the adult with responsibility for the person's welfare and authority to give consent for the person for the approved protective services until the expiration of the order.

5. The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the adult of any rights except to the extent provided for in the order or appointment.

C. The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age and address of the adult in need of protective services; the nature of the emergency; the nature of the person's disability, if determinable; the proposed protective services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subsection A 1 through 4 above; and facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of such attempts.

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D. Written notice of the time, date and place for the hearing shall be given to the person, to his spouse, or if none, to his nearest known next of kin, and a copy of the petition shall be attached. Such notice shall be given at least twenty-four hours prior to the hearing for emergency intervention. The court may waive the twenty-four hour notice requirement upon showing that (i) immediate and reasonably foreseeable physical harm to the person or others will result from the twenty-four hour delay, and (ii) reasonable attempts have been made to notify the adult, his spouse, or if none, his nearest known next of kin.

E. Upon receipt of a petition for an emergency order for protective services, the court shall hold a hearing. The adult who is the subject of the petition shall have the right to be present and be represented by counsel at the hearing. If it is determined that the person is indigent, or, in the determination of the judge, lacks capacity to waive the right to counsel, the court shall locate and appoint a guardian ad litem. If the person is indigent, the cost of the proceeding shall be borne by the State. If the person is not indigent, the cost of the proceeding shall be borne by such person. This hearing shall be held no earlier than twenty-four hours after the notice required in subsection D above has been given, unless such notice has been waived by the court.

F. The adult, the temporary guardian or any interested person may petition the court to have the emergency order set aside or modified at any time there is evidence that a substantial change in the circumstances of the person for whom the emergency services were ordered has occurred.

G. Where protective services are rendered on the basis of an emergency order, the temporary guardian shall submit to the court a report describing the circumstances thereof including the name, place, date and nature of the services provided. This report shall become part of the court record. Such report shall be confidential and open only to such persons as may be directed by the court.

H. If the person continues to need protective services after the renewal order provided in subsection B 3 above has expired, the temporary guardian or the local department of social services or public welfare shall immediately petition the court to appoint a guardian pursuant to § 37.1-128.1 or 37.1-132 of the Code of Virginia. (1977, c. 547; 1978, c. 562; 1979, c. 451.)

The 1979 amendment substituted "§ 37.1-128.1" for "§ 37.1-128.01" near the end of subsection H.

Law Review. — For survey of Virginia law on governmental services and social welfare for the year 1976-77, see 63 Va. L. Rev. 1440 (1977).

§ 63.1-55.7. Same; voluntary protective services. — A. Any adult may receive protective services, provided or arranged for by the director if the adult requests or affirmatively consents to receive these services. If the person withdraws or refuses consent, the services shall not be provided.

B. No person shall interfere with the provision of protective services to an adult who requests or consents to receive such services. In the event that interference occurs on a continuing basis, the director may petition the court to enjoin such interference.

C. The actual costs incurred by the local department in providing protective services shall be borne by the local department, unless the adult agrees to pay for them or a court authorizes the local department to receive reasonable reimbursement for the protective services, excluding administrative costs, from the person's assets after a finding that the adult is financially able to make such payment. (1977, c. 547.)

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§ 19.2-165.1. Payment of medical fees in certain criminal cases. — All medical fees involved in the gathering of evidence for cases involving rape, attempted rape, child molestation, the taking of indecent liberties with children, sodomy, forcible sodomy, incest, inanimate sexual object penetration, sexual battery and aggravated sexual battery shall be paid by the Commonwealth out of the appropriation for criminal charges, provided that any medical treatment, examination, or service rendered be performed by a physician or facility specifically designated by the Commonwealth's attorney in the city or county having jurisdiction of such case for such a purpose.

Where there has been no prior designation of such a physician or facility, medical fees shall be paid out of the appropriation for criminal charges upon authorization by the Commonwealth's attorney of the city or county having jurisdiction over the case. Such authorization may be granted prior to or within forty-eight hours after the medical treatment, examination, or service rendered. (1976, c. 292; 1982, c. 507.)

§ 18.2-67. Depositions of complaining witnesses in cases of criminal sexual assault and attempted criminal sexual assault. — Before or during the trial for an offense or attempted offense under this article, the judge of the court in which the case is pending, with the consent of the accused first obtained in open court, by an order of record, may direct that the deposition of the complaining witness be taken at a time and place designated in the order, and the judge may adjourn the taking thereof to such other time and places as he may deem necessary. Such deposition shall be taken before a judge of a circuit court in the county or city in which the offense was committed or the trial is had, and the judge shall rule upon all questions of evidence, and otherwise control the taking of the same as though it were taken in open court. At the taking of such deposition the attorney for the Commonwealth, as well as the accused and his attorneys, shall be present and they shall have the same rights in regard to the examination of such witness as if he or she were testifying in open court. No other person shall be present unless expressly permitted by the judge. Such deposition shall be read to the jury at the time such witness might have testified if such deposition had not been taken, and shall be considered by them, and shall have the same force and effect as though such testimony had been given orally in court. The judge may, in like manner, direct other depositions of the complaining witness, in rebuttal or otherwise, which shall be taken and read in the manner and under the conditions herein prescribed as to the first deposition. The cost of taking such depositions shall be paid by the Commonwealth. (Code 1950, § 18.1-47; 1960, c. 358; 1975, cc. 14, 15, 606; 1981, c. 397.)

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CHAPTER 18.

SERVICES FOR ABUSED SPOUSES.

Sec.	Sec.
63.1-315. Policy of State; Department of Welfare designated agency to coordinate State efforts.	63.1-318. Authority to receive and grant funds.
63.1-316. Definition.	63.1-319. What functions and services may be funded.
63.1-317. Responsibilities of Department of Welfare.	

§ 63.1-315. Policy of State; Department of Welfare designated agency to coordinate State efforts. — The General Assembly declares that it is the policy of this Commonwealth to support the efforts of public and private community groups seeking to provide assistance to and treatment for the victims of spouse abuse and to provide recognition to the need to combat all phases of spouse abuse in this Commonwealth. To this end the Department of Welfare is designated as the State agency responsible for coordinating State efforts in this regard. (1980, c. 597.)

§ 63.1-316. Definition. — As used in this chapter: "spouse abuse" means any act of violence, including any forceful detention, which results in physical injury and which is committed by a person against another person to whom such person is married or has been married. (1980, c. 597.)

§ 63.1-317. Responsibilities of Department of Welfare. — It shall be the responsibility of the Department of Welfare, to the extent that funds are appropriated by the General Assembly or otherwise made available:

1. To provide a clearinghouse for information exchange about spouse abuse.
2. To encourage the use of existing information and referral agencies to provide specialized information on spouse abuse.
3. To develop and maintain a statewide list of available community and State resources for the victims of spouse abuse.
4. To promote interagency cooperation for technical assistance, data collection and service delivery.
5. To act as the administering agent for State grant funds for community groups seeking to establish service programs for the victims of spouse abuse.
6. To provide technical assistance on establishing shelters, self-help groups and other necessary service delivery programs. (1980, c. 597.)

§ 63.1-318. Authority to receive and grant funds. — Subject to rules and regulations of the Board of Welfare and to the availability of State or federal funds for services to the victims of spouse abuse, the Department of Welfare is authorized:

1. To receive State and federal funds for services to the victims of spouse abuse.
2. To disperse funds through matching grants to local, public or private nonprofit agencies to provide service programs for the victims of spouse abuse.
3. To develop and implement grant mechanisms for funding such local services. (1980, c. 597.)

§ 63.1-319. What functions and services may be funded. — In dispersing funds through grants to local agencies to provide service programs for the

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victims of spouse abuse, the Department of Welfare may fund both administrative functions and the delivery of direct services, including a portion of: the operational costs of offices and shelters including staff, rent, utilities, travel and supplies; twenty-four hour crisis intervention hotlines; counseling; information and referral; self-help groups; transportation; emergency shelter; and follow-up services. (1980, c. 597.)

Category	Citation
1. Victim Compensation Program	7.68.010 et seq.
1.1 Responsible Agency	7.68.020(1), 7.68.030
1.2 Eligible Claimants	7.68.070(2) et seq.
1.3 Losses Covered	7.68.070
1.4 Minimum and Maximum Award	7.68.070, 7.68.070(12),(13)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	7.68.060(2)
1.7 Filing of Claim - Time Limit	7.68.060(1)
1.8 Emergency Award	
1.9 Funding	7.68.035
2. Restitution	
2.1 Sentencing Option	9.95.210
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	7.68.200 et seq.
4. Witness Fees	2.36.150; 2.40.010
5. Victim's Bill of Rights	7.69.010 et seq.
6. Protection from Intimidation	
6.1 Crime Defined	9A.72.110 et seq.; 9A.04.110 (25)
6.2 Protective Orders	7.69.030(3)
7. Victim Notification	
7.1 of Compensation Program	
7.2 of Witness Fees	7.69.030(4)
7.3 of Final Disposition	7.69.030(1)
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	7.69.030(2)
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	7.69.030(7)
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	7.69.030(6); 10.79.050
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	70.125.060
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	7.68.070(13), 7.68.170
13.2 Special Programs	70.125.010 et seq.
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	10.99.010, 10.99.040(2)
14.2 Domestic Violence Shelters	70.123.010 et seq.
14.3 Domestic Violence Reporting	10.99.030(6),(7)
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	7.68.145
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	7.68.140 (victim compensation records); 70.125.070 (records of rape crisis center not discoverable)
15.4 Sexual Assault Counselor Privilege	See, 70.125.070

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Washington Revised Code Annotated

CHAPTER 7.68—VICTIMS OF CRIMES— COMPENSATION, ASSISTANCE

Sections	Sections
7.68.010 Intent.	7.68.150 Benefits, payments and costs to be funded and accounted for separately.
7.68.020 Definitions.	7.68.160 Claims of persons injured prior to effective date.
7.68.030 Duties of department—General provisions.	7.68.165 Application of chapter to claims filed under RCW 7.68.160.
7.68.035 Penalty assessments in addition to fine or bail forfeiture—Crime victims compensation account created—Use.	7.68.170 Examination costs of sexual assault victims paid by state.
7.68.040 Civil actions against state and jurisdiction of courts abolished. [Repealed.]	7.68.200 Payment for reenactments of crimes — Contracts — Deposits—Damages.
7.68.050 Right of action for damages—Election—Effect of election or recovery—Lien of state.	7.68.210 Payment may be directed based on contract.
7.68.060 Applications for benefits.	7.68.220 Notice published of moneys in escrow.
7.68.065 Duty of law enforcement agencies to inform victim of right to benefits. [Repealed.]	7.68.230 Payment to accused if charges dismissed, acquitted.
7.68.070 Benefits—Right to and amount—Limitations.	7.68.240 Payment if no actions pending.
7.68.075 Marital status—Payment for or on account of children.	7.68.250 Persons not guilty for mental reasons deemed convicted.
7.68.080 Medical aid.	7.68.260 Time for filing action begins when escrow account established.
7.68.090 Establishment of funds.	7.68.270 Escrow moneys may be used for legal representation.
7.68.100 Physicians' reporting.	7.68.280 Actions to avoid law null and void.
7.68.110 Appeals.	7.68.900 Effective date—1973 ex.s. c 122.
7.68.120 Reimbursement.	7.68.905 Severability — Construction — 1977 1st ex.s. c 302.
7.68.125 Erroneous or fraudulent payment—Repayment, when — Penalty.	7.68.910 Section captions.
7.68.130 Public or private insurance.	7.68.915 Savings—Statute of limitations —1982 1st ex.s. c 8.
7.68.140 Confidentiality.	
7.68.145 Release of information in performance of official duties.	

Domestic violence, official response: Chapter 10.99 RCWA.

Victims of sexual assault, programs and plans in aid of: RCWA Chapter 70.125. 22 ALR Fed 903 (liability of United States under Federal Tort Claims Act for injuries resulting from failure to provide police protection).

Ops Atty Gen 1980 LO No 15 (the state board of industrial insurance appeals may not use RCWA Title 51 accident-fund or medical-aid-fund moneys to process and adjudicate appeals arising under the Crime Victims' Compensation Act).

It is the intent of the legislature of the state of Washington to provide a method of compensating and assisting innocent victims of criminal acts who suffer bodily injury or death as a consequence thereof. To that end, it is the intention of the legislature to make certain of the benefits and services which are now or hereafter available to injured workmen under Title 51 RCW also available to innocent victims of crime as defined and provided for in this chapter. [Enacted Laws 1st Ex Sess 1973 ch 122 § 1, effective July 1, 1974; Amended by Laws 1st Ex Sess 1977 ch 302 § 1.]

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Applicable period of limitations for action, in which plaintiff alleged that parole officer violated his civil rights by disclosing information to another participant in prisoner release program that precipitated stabbing of plaintiff, was three years under RCWA 4.16.080 "for any other injury to the person or rights of another not hereinafter enumerated" rather than two-year statute, RCWA 4.16.130, for "an action for relief not hereinafter provided for." *Rose v. Rinaldi* (C.A.1981) 654 F.2d 546.

RCW 7.68, which establishes a means for compensation of the victims of criminal acts, is remedial legislation and will be given retroactive application. *Haddenham v State* (1976) 87 Wn 2d 145, 550 P2d 9.

The Victims of Crimes—Compensation, Assistance Act, RCWA 7.68.010 et seq., is to provide assistance to innocent victims of violent criminal acts. Department of Labor and Industries v Sergeant (1980) 27 Wn App 1, 615 P2d 519.

Sec. 4. Section 2, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 156, Laws of 1980 and RCW 7.68.020 are each amended to read as follows:

The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

(1) "Department" means the department of labor and industries.

(2) "Criminal act" means an act committed or attempted in this state which is punishable as a felony or gross misdemeanor under the laws of this state: PROVIDED: That the operation of a motor vehicle, motorcycle, train, boat or aircraft in violation of law does not constitute a "criminal act" unless (a) the injury or death was intentionally inflicted ((or)); (b) the operation thereof was part of the commission of another non-vehicular criminal act as defined in this section ((+)); or (c) the death or injury was the result of operation of a motor vehicle and a conviction of vehicular homicide under RCW 46.61.520 or vehicular assault under section 2, chapter ... (SB No. 3106), Laws of 1983, has been obtained: PROVIDED, FURTHER:

(a) That neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in subsections (c) and (d) above; (b) that evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character

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of the acts; (c) that acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

(3) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "workman" as defined in chapter 51.08 RCW as now or hereafter amended.

(4) "Child," "accredited school," "dependent," "beneficiary," "average monthly wage," "director," "injury," "invalid," "permanent partial disability," and "permanent total disability" have the meanings assigned to them in chapter 51.08 RCW as now or hereafter amended.

(5) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(6) "Private insurance" means any source of recompense provided by contract available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(7) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

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7.68.030 Duties of department—General provisions

It shall be the duty of the director to establish and administer a program of benefits to victims of criminal acts within the terms and limitations of this chapter. In so doing, the director shall, in accordance with chapter 34.04 RCW, adopt rules and regulations necessary to the administration of this chapter, and the provisions contained in chapter 51.04 RCW, including but not limited to RCW 51.04.020, 51.04.030, 51.04.040, 51.04.050 and 51.04.100 as now or hereafter amended, shall apply where appropriate in keeping with the intent of this chapter. [Enacted Laws 1st Ex Sess 1973 ch 122 § 3, effective July 1, 1974.]

Sec. 1. Section 10, chapter 302, Laws of 1977 ex. sess. as amended by section 1, chapter 8, Laws of 1982 1st ex. sess. and RCW 7.68.035 are each amended to read as follows:

(1) Whenever any person is found guilty in any court of competent jurisdiction of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment ~~((of fifty dollars for a felony or gross misdemeanor and twenty-five dollars for a misdemeanor))~~. The assessment shall be in addition to any other penalty or fine imposed by law and shall be fifty dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and twenty-five dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, section 2, chapter ... (SB No. 3106), Laws of 1983, 46.61.024, 46.52.090, 46.70.140, 46.65.090, 46.61.502, 46.61.504, 46.52.100, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) Whenever any person accused of having committed a ~~((criminate act))~~ crime posts bail pursuant to the provisions of chapter 10.19 RCW~~((7))~~ and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to

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any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the ~~((criminal act))~~ crime.

(4) ~~((Notwithstanding any other provision of law))~~ Except as provided in subsection (5) of this section, such penalty assessments shall be paid by the clerk of the court to the city or county treasurer, as the case may be, who shall monthly transmit eighty percent of such penalty assessments to the state treasurer. The state treasurer shall deposit such assessments in an account within the state general fund to be known as the crime victims compensation account, hereby created, and all moneys placed in the account shall be used exclusively for the administration of this chapter, after appropriation by statute. Except as provided in subsection (5) of this section, the remaining twenty percent of such assessments shall be provided to the county prosecuting attorney to be used exclusively for comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crimes;

(c) Make a reasonable effort to inform the known victim or his surviving dependents of the existence of this chapter and the procedure for making application for benefits;

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(d) Assist victims in the restitution and adjudication process; and.

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program by a prosecuting attorney, the city or county treasurer, as the case may be, may transmit monthly eighty percent of such penalty assessments to the state treasurer and provide the remaining twenty percent of such assessments to the county prosecuting attorney to be used exclusively for a comprehensive program for victims and witnesses, and the prosecuting attorney may retain such twenty percent until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the twenty percent penalty assessments until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the city

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or county treasurer, as the case may be, shall monthly transmit one hundred percent of such penalty assessments and shall transmit all previously retained penalty assessments and interest, if any, to the state treasurer for deposit in the crime victims compensation account within the state general fund.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Penalty assessments under this section shall also be imposed in juvenile offense dispositions under Title 13 RCW. Upon motion of a party and a showing of good cause, the court may modify the penalty assessment in the disposition of juvenile offenses under Title 13 RCW.

7.68.040 Civil actions against state and jurisdiction of courts abolished [Repealed]

Enacted Laws 1st Ex Sess 1973 ch 122 § 4, effective July 1, 1974, and repealed by Laws 1st Ex Sess 1977 ch 302 § 11.

7.68.050 Right of action for damages—Election—Effect of election or recovery—Lien of state

(1) No right of action at law for damages incurred as a consequence of a criminal act shall be lost as a consequence of being entitled to benefits under the provisions of this chapter. The victim or his beneficiary may elect to seek damages from the person or persons liable for the claimed injury or death, and such victim or beneficiary is entitled to the full compensation and benefits provided by this chapter regardless of any election or recovery made pursuant to this section.

(2) For the purposes of this section, the rights, privileges, responsibilities, duties, limitations, and procedures contained in RCW 51.24.050 through 51.24.100 as now existing or hereafter amended apply.

(3) If the recovery involved is against the state, the lien of the department includes the interest on the benefits paid by the department to or on behalf of such person under this chapter computed at the rate of eight percent per annum from the date of payment.

(4) The 1980 amendments to this section apply only to injuries which occur on or after April 1, 1980.

7.68.060 Applications for benefits

For the purposes of applying for benefits under this chapter, the rights, privileges, responsibilities, duties, limitations and procedures contained in RCW 51.28.020, 51.28.030, 51.28.040 and 51.28.060 as now or hereafter amended shall apply: *Provided*, That no compensation of any kind shall be available under this chapter if:

(1) An application for benefits is not received by the department within one year after the date of the criminal act or the date the rights of dependents or beneficiaries accrued, or

(2) The criminal act is not reported by the victim or someone on his behalf to a local police department or sheriff's office within seventy-two hours of its occurrence or, if it could not reasonably have been reported within that period, within seventy-two hours of the time when a report could reasonably have been made.

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Sec. 2. Section 7, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 2, chapter 8, Laws of 1982 1st ex. sess. and RCW 7.68.070 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW as now or hereafter amended except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 as now or hereafter amended are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and ~~((the effective date of this act))~~ January 1, 1983, or his family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, and the rights, duties, responsibilities, limitations, and procedures applicable to a workman as contained in RCW 51.32.010 as now or hereafter amended are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 as now or hereafter amended are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person ~~((shall be))~~ is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim;

(b) The result of an act or acts committed by a person living in the same household with the victim;

(c) The result of an act or acts committed by a person who is at the time of the criminal act the spouse, child, parent, or sibling of the victim by the half or whole blood, adoption, or marriage, or the parent of the spouse of or sibling of the spouse of the victim by the half or whole blood, adoption, or marriage, or the son-in-law or daughter-in-law of the victim, unless in the director's sole discretion it is determined that:

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(i) The parties to the marriage which establishes the relationship between the person committing the criminal act and the victim described above are estranged and living apart, and

(ii) The interests of justice require otherwise in the particular case;

(d) The result of the victim assisting, attempting, or committing a criminal act; or

(e) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a workman and contained in RCW 51.32.050 as now or hereafter amended shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed five hundred dollars in any claim: PROVIDED FURTHER, That ((in the event)) if the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act:

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived him or where such spouse has legal custody of all of his children, shall be limited to burial expenses ~~((not-to-exceed five-hundred-dollars))~~ and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid,

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and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits ~~((shall))~~ may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 as now or hereafter amended for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section ~~((shall))~~ apply under this chapter: PROVIDED, That ((in-the-event)) if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, ((such)) the victim shall receive monthly during the period of ((such)) the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018 as now or hereafter amended:

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(a) If married at the time of the criminal act, twenty-nine percent of ((such)) the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of ((such)) the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of ((such)) the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of ((such)) the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of ((such)) the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of ((such)) the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of ((such)) the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of ((such)) the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of ((such)) the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of ((such)) the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of ((such)) the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of ((such)) the average monthly wage.

(6) The benefits established in RCW 51.32.080 as now or hereafter amended for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section ((shatt)) equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 as now or hereafter amended for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment

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contained in that section ((shatt)) apply under this chapter: PROVIDED, That no person ((shatt-be)) is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 as now or hereafter shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section ((shatt)) apply under this chapter: PROVIDED, That benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 as now or hereafter amended ((shatt)) apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workmen contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 as now or hereafter amended ((shatt-be)) are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person ((shatt-be)) is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) Except for benefits authorized under RCW 7.68.080, no more than fifteen thousand dollars may be granted as a result of any single injury or death.

(13) Notwithstanding the provisions of Title 51 RCW, no ((victim shatt-be)) claim resulting from a single injury or death is eligible for benefits for the first two hundred dollars worth of loss suffered: PROVIDED, That this subsection ((shatt)) does not apply to

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costs covered by RCW 7.68.170 or to other medical costs incurred by the victim of a sexual assault.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for any one injury or death for loss of earnings, those benefits payable pursuant to subsection (7) of this section, or for loss of future earnings, those benefits payable pursuant to subsection (5) of this section, or for loss of support, those benefits payable pursuant to subsection (4) of this section, shall be limited to ten thousand dollars.

Sec. 3. Section 8, chapter 122, Laws of 1973 1st ex. sess. as last amended by section 27, chapter 6, Laws of 1981 1st ex. sess. and RCW 7.68.080 are each amended to read as follows:

The provisions of chapter 51.36 RCW as now or hereafter amended (~~shall~~) govern the provision of medical aid under this chapter to victims injured as a result of a criminal act, including criminal acts committed ((prior-to)) between July 1, 1981, and January 1, 1983, except that:

(1) The provisions contained in RCW 51.36.030 and 51.36.040 as now or hereafter amended (~~shall~~) do not apply to this chapter.

(2) The specific provisions of RCW 51.36.020 as now or hereafter amended relating to supplying emergency transportation (~~shall~~) do not apply: PROVIDED, That when the injury to any victim is so serious as to require his being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed from the fund established pursuant to RCW 7.68.090.

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7.68.090. Establishment of funds

The director shall establish such fund or funds, separate from existing funds, necessary to administer this chapter, and payment to these funds shall be from legislative appropriation, reimbursement and subrogation as provided in this chapter, and from any contributions or grants specifically so directed. [Enacted Laws 1st Ex Sess 1973 ch 122 § 9, effective July 1, 1974.]

7.68.100 Physicians' reporting

The requirements relating to physicians' reporting contained in RCW 51.36.060 and 51.48.060 as now or hereafter amended shall apply under this chapter. Any funds collected pursuant to RCW 51.48.060 as now or hereafter amended shall be paid into the fund established pursuant to RCW 7.68.090. [Enacted Laws 1st Ex Sess 1973 ch 122 § 10, effective July 1, 1974.]

7.68.110 Appeals

The provisions contained in chapter 51.52 RCW as now or hereafter amended relating to appeals shall govern appeals under this chapter: *Provided*, That no provision contained in chapter 51.52 RCW concerning employers as parties to any settlement, appeal, or other action shall apply to this chapter: *Provided further*, That appeals taken from a decision of the board of industrial insurance appeals under this chapter shall be governed by the provisions relating to judicial review of administrative decisions contained in RCW 34.04.130 and 34.04.140 as now or hereafter amended, and the department shall have the same right of review from a decision of the board of industrial insurance appeals as does the claimant. [Enacted Laws 1st Ex Sess 1973 ch 122 § 11, effective July 1, 1974; Amended by Laws 1st Ex Sess 1975 ch 176 § 5, effective June 4, 1975; Laws 1st Ex Sess 1977 ch 302 § 7.]

7.68.120 Reimbursement

Any person who has committed a criminal act which resulted in injury compensated under this chapter may be required to make reimbursement to the department as hereinafter provided.

(1) Any payment of benefits to or on behalf of a victim under this chapter creates a debt due and owing to the department by any person found to have committed such criminal act in either a civil or criminal court proceeding in which he is a party: *Provided*, That where there has been a superior or district court order, or an order of the board of prison terms and paroles or the department of social and health services, as hereinafter provided, the debt shall be limited to the amount provided for in said order. A court order shall prevail over any other order.

(2) Upon being placed on work release pursuant to chapter 72.65 RCW, or upon release from custody of a state correctional facility on parole, any convicted person who owes a debt to the department as a consequence of a criminal act may have the schedule or amount of payments therefor set as a condition of work release or parole by the department of social and health services or board of prison terms and paroles respectively, subject to modification based on change of circumstances. Such action shall be binding on the department.

(3) Any requirement for payment due and owing the department by a convicted person under this chapter may be waived, modified downward or otherwise adjusted by the department in the interest of justice and the rehabilitation of the individual. [Enacted Laws 1st Ex Sess 1973 ch 122 § 12, effective July 1, 1974.]

7.68.125 Erroneous or fraudulent payment—Repayment, when—Penalty

(1) Whenever any payment under this chapter is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the

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recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter: *Provided*, That the department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed that any claim therefor has been waived: *Provided further*, That the department may exercise its discretion to waive, in whole or in part, the amount of any such timely claim.

(2) Whenever any payment under this chapter has been made pursuant to an adjudication by the department, board, or any court and timely appeal therefrom has been made and the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient under this chapter: *Provided*, That the department may exercise its discretion to waive, in whole or in part, the amount thereof.

(3) Whenever any payment under this chapter has been induced by fraud the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient under this chapter and the amount of the penalty shall be placed in the fund or funds established pursuant to RCW 7.68.090 as now or hereafter amended. [Added by Laws 1st Ex Sess 1975 ch 176 § 8, effective June 4, 1975.]

CJS Criminal Law § 2007.

Key Number Digests: Criminal Law ☞1220.

7.68.130 Public or private insurance

Benefits payable pursuant to this chapter shall be reduced by the amount of any other public or private insurance available. Payment by the department under this chapter shall be secondary to such other insurance benefits, notwithstanding the provision of any contract or coverage to the contrary: *Provided*, That in the case of private life insurance proceeds, the first forty thousand dollars of such proceeds shall not be considered for purposes of any such reduction in benefits.

[Enacted Laws 1st Ex Sess 1973 ch 122 § 13, effective July 1, 1974; Amended by Laws 1st Ex Sess 1977 ch 302 § 8; Laws 1980 ch 156 § 4, effective April 1, 1980.]

Legislative Intent—"Public or private insurance"—1980 c 156: See note following RCWA 7.68.020.

RCWA 7.68.130, providing that benefits paid pursuant to chapter shall be reduced by insurance and payment by department shall be secondary to other insurance or benefits, did not violate due process guarantees. *Standing v Department of Labor and Industries* (1979) 92 Wn 2d 463, 598 P2d 725.

RCWA 7.68.130, which classifies insurance proceeds in different manner from victim's other assets, does not violate federal and state equal protection guarantees. *Standing v Department of Labor and Industries* (1979) 92 Wn 2d 463, 598 P2d 725.

Under RCWA 7.68.130, providing that benefits paid shall be reduced by amount of "public insurance," benefits received under the Federal Old Age,

Survivors and Disability Insurance Act [42 U.S.C.A. § 402(d)(1)] would not be included. *Standing v Department of Labor and Industries* (1979) 92 Wn 2d 463, 598 P2d 725.

Supreme court's holding in *Standing v Department of Labor & Industries* (1979) 92 Wn 2d 463, 598 P2d 725, that social security benefits were not "public insurance" under Crime Victims Compensation Act, RCWA 7.68.010 et seq., related back to time of statute's enactment; and therefore such holding could be retroactively applied to order denying widow benefits on the basis that her social security benefits constituted "public insurance" which was deductible from the benefits payable; however, subsequent legislation which defined

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"public insurance" to include social security benefits had a prospective effect only. *Fairley v Department of Labor & Industries* (1981) 29 Wn App 477, 627 P2d 961.

7.68.140 Confidentiality

Information contained in the claim files and records of victims, under the provisions of this chapter, shall be deemed confidential and shall not be open to public inspection: *Provided*, That, except as limited by state or federal statutes or regulations, such information may be provided to public employees in the performance of their official duties: *Provided further*, That except as otherwise limited by state or federal statutes or regulations a representative of a claimant, be it an individual or an organization, may review a claim file or receive specific information therefrom upon the presentation of the signed authorization of the claimant: *Provided further*, That physicians treating or examining victims claiming benefits under this chapter or physicians giving medical advice to the department regarding any claim may, at the discretion of the department and as not otherwise limited by state or federal statutes or regulations, inspect the claim files and records of such victims, and other persons may, when rendering assistance to the department at any stage of the proceedings on any matter pertaining to the administration of this chapter, inspect the claim files and records of such victims at the discretion of the department and as not otherwise limited by state or federal statutes or regulations. [Enacted Laws 1st Ex Sess 1973 ch 122 § 14, effective July 1, 1974; Amended by Laws 1st Ex Sess 1975, ch 176 § 6, effective June 4, 1975.]

CJS Records §§ 35 et seq.

Key Number Digests: Records ☞14.

7.68.145 Release of information in performance of official duties

Notwithstanding any other provision of law, all law enforcement, criminal justice, or other governmental agencies, or hospital; any physician or other practitioner of the healing arts; or any other organization or person having possession or control of any investigative or other information pertaining to any alleged criminal act or victim concerning which a claim for benefits has been filed under this chapter, shall, upon request, make available to and allow the reproduction of any such information by the section of the department administering this chapter or other public employees in their performance of their official duties under this chapter.

No person or organization, public or private, shall incur any legal liability by reason of releasing any such information to the director of labor and industries or the section of the department which administers this chapter or other public employees in the performance of their official duties under this chapter. [Added by Laws 1st Ex Sess 1975 ch 176 § 7, effective June 4, 1975.]

Key Number Digests: Reports ☞14.

7.68.150 Benefits, payments and costs to be funded and accounted for separately

All benefits and payments made, and all administrative costs accrued, pursuant to this chapter shall be funded and accounted for separate from the other operations and responsibilities of the department. [Enacted Laws 1st Ex Sess 1973 ch 122 § 15, effective July 1, 1974.]

7.68.160 Claims of persons injured prior to effective date

Any person who has been injured as a result of a "criminal act" as herein defined on or after January 1, 1972 up to the effective date of this 1973 act, who would otherwise be eligible for benefits under this 1973 act, may for a

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period of ninety days from the effective date of this 1973 act, file a claim for benefits with the department on a form provided by the department. The department shall investigate and review such claims, and, within two hundred ten days of the effective date of this 1973 act, shall report to the legislative budget committee and the governor its findings and recommendations as to such claims, along with a statement as to what special legislative relief, if any, the department recommends should be provided. [Enacted Laws 1st Ex Sess 1973 ch 122 § 16, effective July 1, 1974.]

Effective date—1973 1st ex.s. c 122: See RCW 7.68.900 and note following.

7.68.165 Application of chapter to claims filed under RCW 7.68.160

The rights, privileges, responsibilities, duties, limitations and procedures contained in this chapter shall apply to those claims filed pursuant to RCW 7.68.160. In respect to such claims, the department shall proceed in the same manner and with the same authority as provided in this chapter with respect to those claims filed pursuant to RCW 7.68.060 as now or hereafter amended. [Added by Laws 1st Ex Sess 1975 ch 176 § 10, effective June 4, 1975.]

CJS Criminal Law § 2007.

Key Number Digests: Criminal Law ☞1220.

7.68.170 Examination costs of sexual assault victims paid by state

No costs incurred by a hospital or other emergency medical facility for the examination of the victim of a sexual assault, when such examination is performed for the purposes of gathering evidence for possible prosecution, shall be billed or charged directly or indirectly to the victim of such assault. Such costs shall be paid by the state pursuant to this chapter.

[Added by Laws 1st Ex Sess 1979 ch 219 § 11, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

CJS Hospitals § 7.

Key Number Digests: Hospitals ☞5.

7.68.200 Payment for reenactments of crimes—Contracts—Deposits—Damages

After hearing, as provided in RCW 7.68.210, every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinion or emotions regarding such crime, shall submit a copy of such contract to the department and pay over to the department any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his representatives. The department shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by: (i) such convicted person; or (ii) such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his representatives.

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7.68.210 Payment may be directed based on contract

The prosecutor or the department may, at any time after the person's arraignment petition any superior court for an order, following notice and hearing, directing that any contract described in RCW 7.68.209 shall be paid in accordance with RCW 7.68.200 through 7.68.260.

[Added by Laws 1st Ex Sess 1979 ch 219 § 12, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

7.68.220 Notice published of moneys in escrow

The department, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to such county advising such victims that such escrow moneys are available to satisfy money judgments pursuant to this section. For crimes committed in a city located within a county having a population of one million or more, the notice provided for in this section shall be in newspapers having general circulation in such city. The department may, in its discretion, provide for such additional notice as it deems necessary. [Added by Laws 1st Ex Sess 1979 ch 219 § 14, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

CJS Criminal Law § 2007.

Key Number Digests: Criminal Law ☞1220.

7.68.230 Payment to accused if charges dismissed, acquitted

Upon dismissal of charges or acquittal of any accused person the department shall immediately pay over to such accused person the moneys in the escrow account established on behalf of such accused person.

[Added by Laws 1st Ex Sess 1979 ch 219 § 15, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

CJS Depositaries §§ 4, 5.

Key Number Digests: Deposits and Escrows ☞4.

7.68.240 Payment if no actions pending

Upon a showing by any convicted person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to this act,¹ the department shall immediately pay over any moneys in the escrow account to such person or his legal representatives.

[Added by Laws 1st Ex Sess 1979 ch 219 § 16, effective September 1, 1979.]

¹ Reviser's note: "this act" literally refers to 1979 1st ex.s. c 219. As used in this section the term apparently refers to only sections 12 through 20 of that act which are codified as RCWA 7.68.200 to 7.68.260.

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

CJS Depositaries §§ 4, 5.

Key Number Digests: Deposits and Escrows ☞4.

7.68.250 Persons not guilty for mental reasons deemed convicted

For purposes of this act,¹ a person found not guilty as a result of the defense of mental disease or defect shall be deemed to be a convicted person.

[Added by Laws 1st Ex Sess 1979 ch 219 § 17, effective September 1, 1979.]

¹ Reviser's note: "this act," see note following RCWA 7.68.240.

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

CJS Depositaries §§ 4, 5.

Key Number Digests: Deposits and Escrows ☞4.

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7.68.260 Time for filing action begins when escrow account established

Notwithstanding any inconsistent provision of the civil practice and rules with respect to the timely bringing of an action, the five year period provided for in RCW 7.68.200 shall not begin to run until an escrow account has been established.

[Added by Laws 1st Ex Sess 1979 ch 219 § 18, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

CJS Limitations of Actions § 121.

Key Number Digests: Limitation of Actions ☞58(1).

7.68.270 Escrow moneys may be used for legal representation

Notwithstanding the foregoing provisions of this act¹ the department shall make payments from an escrow account to any person accused or convicted of a crime upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process.

[Added by Laws 1st Ex Sess 1979 ch. 219 § 19, effective September 1, 1979.]

¹Reviser's note: "this act," see note following RCWA 7.68.240.

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

7.68.280 Actions to avoid law null and void

Any action taken by any person accused or convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this act¹ shall be null and void as against the public policy of this state.

[Added by Laws 1st Ex Sess 1979 ch 219 § 20, effective September 1, 1979.]

¹Reviser's note: "this act," see note following RCWA 7.68.240.

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

CJS Depositories §§ 4, 5.

Key Number Digests: Deposits and Escrows ☞4.

7.68.900 Effective date—1973 ex.s. c 122

This chapter shall take effect on July 1, 1974. [Enacted Laws 1st Ex Sess 1973 ch 122 § 17.]

Funding required: "This bill shall not take effect until the funds necessary for its implementation have been specifically appropriated by the legislature and such appropriation itself has become law. It is the intention of the legislature that if the governor shall veto this section or any item thereof, none of the provisions of this bill shall take effect." [1973 1st ex.s. c 122 § 21.]

7.68.905 Severability—Construction—1977 1st ex.s. c 302

(1) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.

(2) Subsection (1) of this section shall be effective retroactively to July 1, 1974. [Added by Laws 1st Ex Sess 1977 ch 302 § 12.]

7.68.910 Section captions

Section captions as used in this act do not constitute any part of the law. [Enacted Laws 1st Ex Sess 1973 ch 122 § 20, effective July 1, 1974.]

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7.68.915 Savings—Statute of limitations—1982 1st ex.s. c 8

Nothing in this act¹ affects or impairs any right to benefits existing prior to the effective date of this act. For injuries occurring on and after July 1, 1981, and before the effective date of this act,² the statute of limitations for filing claims under this chapter shall begin to run on the effective date of this act.

[Added by Laws 1st Ex Sess 1982 ch 8 § 3, effective January 1, 1983.]

Reviser's note: ¹(1) "This act" [1982 1st ex.s. c 8] consists of RCW 2.56.035 and 7.68.915, amendments to RCW 7.68.035, 7.68.070, 9.92.060, 9.95.210, and several uncodified sections.

²(2) For "the effective date of this act," see note following RCW 7.68.035.

Effective date—Intent—Reports—1982 1st ex.s. c 8: See notes following RCWA 7.68.035.

CHAPTER 7.69—VICTIMS AND WITNESSES OF CRIMES

Sections

7.69.010 Intent.
7.69.020 Definitions.

Sections

7.69.030 Rights of victims and witnesses.

7.69.010 Intent

In recognition of the civic and moral duty of victims and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

[Added by Laws 1981 ch 145 § 1.]

CJS Criminal Law §§ 2008 et seq.

Key Number Digests: Criminal Law ☞1222.

7.69.020 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act committed by an adult or juvenile in this state which, if committed by a competent adult person, would constitute a crime as provided in either federal, state, or local statute.

(2) "Family member" means spouse, child, parent, or legal guardian.

(3) "Victim" means a person against whom a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.

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7.69.030 Rights of victims and witnesses

There shall be a reasonable effort made to assure that victims and witnesses of crimes have the following rights:

(1) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim or witness is involved;

(2) To be notified that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(3) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(4) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(5) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(6) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(7) To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(8) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance; and

(9) To have the family members of homicide victims afforded all of the rights established under subsections (1) through (4), (6), and (7) of this section. [Added by Laws 1981 ch 145 § 3.]

CJS Criminal Law §§ 2008 et seq.
Key Number Digests: Criminal Law 1222.

CHAPTER 7.70—ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

Sections	Sections
7.70.010 Declaration of modification of actions for damages based upon injuries resulting from health care.	7.70.050 Failure to secure informed consent—Necessary elements of proof—Emergency situations.
7.70.020 Definitions.	7.70.060 Consent form—Contents—Prima facie evidence—Failure to use.
7.70.030 Propositions required to be established—Burden of proof.	7.70.070 Attorneys' fees.
7.70.040 Necessary elements of proof that injury resulted from failure to follow accepted standard of care.	7.70.080 Evidence of compensation from other source.

Complaint in personal injury actions not to include statement of damages: RCWA 4.28.360.

Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: RCWA Chapter 5.64.

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Sec. 4. Section 1, chapter 19, Laws of 1980 as last amended by section 10, chapter 47, Laws of 1982 1st ex. sess. and RCW 9.95.210 are each amended to read as follows:

~~((The court))~~ In granting probation, the court may suspend the ~~((imposing))~~ imposition or the execution of the sentence and may direct that ~~((such))~~ the suspension may continue for such period of time as it shall designate, not exceeding the maximum term of sentence in the case of a superior court or a period of two years in the case of a court of limited jurisdiction organized under Title 3, 35, or 35A RCW, except as hereinafter set forth and upon such terms and conditions as it shall determine.

~~((The court))~~ In the order granting probation and as a condition thereof, the court may in its discretion imprison the defendant in the county jail for a period not exceeding one year or may fine the defendant any sum not exceeding one thousand dollars plus the costs of the action, and may in connection with ~~((such))~~ the probation impose both imprisonment in the county jail and fine and court costs. As a condition of probation, the court shall require the payment of the penalty assessment required by RCW 7.68.035. The court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay such fine as may be imposed and court costs, including

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reimbursement of the state for costs of extradition if return to this state by extradition was required, and (4) to contribute to a county or interlocal drug fund, and may require bonds for the faithful observance of any and all conditions imposed in the probation. The court shall order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of ((said)) the probation to follow implicitly the instructions of the secretary. If the probationer has been ordered to make restitution, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of ((such)) the person during the term of his probation((+---PROVE---,---that)). For defendants found guilty in justice court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

2.36.150 Compensation of jurors—Reimbursement of counties for jury and witness fees in certain cases

Jurors shall receive for each day's attendance, besides mileage at the rate determined under RCW 43.03.060, the following compensation:

- (1) Grand jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (2) Petit jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (3) Coroner's jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (4) Justice of the peace jurors may receive up to twenty-five dollars but in no case less than ten dollars;

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Provided, That a person excused from jury service at his own request shall be allowed not more than a per diem and such mileage, if any, as to the court shall seem just and equitable under all circumstances: *Provided further*, That the state shall fully reimburse the county in which trial is held for all jury fees and witness fees related to criminal cases which result from incidents occurring within an adult or juvenile correctional institution: *Provided further*, That the compensation paid jurors shall be determined by the county legislative authority and shall be uniformly applied within the county.

CHAPTER 2.40—WITNESSES

Washington Court Rules: CR Rules 26-37.
Utilities and transportation commission proceedings, witness fees: RCWA 80.04.040, 81.04.040.

2.40.010 Witness fees and mileage

Witnesses shall receive for each day's attendance in all courts of record of this state the same compensation per day and per mile as jurors in superior court. Witnesses in any other court shall receive for each day's attendance the same compensation per day and per mile as jurors in justice court.

9A.72.110 Intimidating a witness

(1) A person is guilty of intimidating a witness if, by use of a threat directed to a witness or a person he has reason to believe is about to be called as a witness in any official proceeding or to a person whom he has reason to believe may have information relevant to a criminal investigation, he attempts to:

- (a) Influence the testimony of that person; or
 - (b) Induce that person to elude legal process summoning him to testify; or
 - (c) Induce that person to absent himself from such proceedings.
- (2) "Threat" as used in this section means
- (a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
 - (b) threats as defined in RCW 9A.04.110(25).
- (3) Intimidating a witness is a class B felony.

[Amended by Laws 1st Ex Sess 1982 ch 47 § 18.]

Severability—1982 1st ex.s. c 47: See note following RCWA 9.41.025.

RCWA 9.69.080, which proscribed tampering with a witness with an intent to obstruct the course of justice was not unconstitutionally vague. *State v Hegge* (1978) 89 Wn 2d 584, 574 P2d 386. Where threat against complaining party was allegedly made one day after arrest of codefendants and no information had yet been filed at that time, and "official proceeding" was not pending at the time the threat was allegedly made, and thus juvenile defendant could not be convicted of intimidating a witness. *State v Pella* (1980) 25 Wn App 795, 612 P2d 8.

9A.72.120 Tampering with a witness

(1) A person is guilty of tampering with a witness if he attempts to induce a witness or person he has reason to believe is about to be called as a witness in any official proceeding or a person whom he has reason to believe may have information relevant to a criminal investigation to:

- (a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or
 - (b) Absent himself from such proceedings.
- (2) Tampering with a witness is a class C felony.

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9A.04.110 Definitions. In this title unless a different meaning plainly is required:

- (1) "Acted" includes, where relevant, omitted to act;
- (2) "Actor" includes, where relevant, a person failing to act;
- (25) "Threat" means to communicate, directly or indirectly the intent:
 - (a) To cause bodily injury in the future to the person threatened or to any other person; or
 - (b) To cause physical damage to the property of a person other than the actor; or
 - (c) To subject the person threatened or any other person to physical confinement or restraint; or
 - (d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or
 - (e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or
 - (f) To reveal any information sought to be concealed by the person threatened; or
 - (g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - (h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or
 - (i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or
 - (j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships.

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10.79.050 Restoration of stolen property to owner—Duties of officers

All property obtained by larceny, robbery or burglary, shall be restored to the owner; and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his rights to such property; and it shall be the duty of the officer who shall arrest any person charged as principal or accessory in any robbery or larceny, to secure the property alleged to have been stolen, and he shall be answerable for the same, and shall annex a schedule thereof to his return of the warrant.

* * *

CHAPTER 70.125—VICTIMS OF SEXUAL ASSAULT ACT

Sections		Sections	
70.125.010	Short title.	70.125.060	Personal representative may accompany victim during treatment or proceedings.
70.125.020	Legislative findings—Program objectives.	70.125.065	Records of rape crisis centers not available as part of discovery—Exceptions.
70.125.030	Definitions.	70.125.070	Termination—June 30, 1985.
70.125.040	Coordinating office—State-wide plan.		
70.125.050	State-wide program services.		

The Victims of Sexual Assault Act terminates June 30, 1985. See RCWA 70.125.070.

Victims of crimes—Compensation, assistance: RCWA Chapter 7.63.
CJS—States §§ 120, 121, 136 to 138, 140.
Key Number Digests: States—67.

70.125.010 Short title

This chapter may be known and cited as the Victims of Sexual Assault Act.

[Enacted Laws 1st Ex Sess 1979 ch 219 § 1, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

[1979 1st ex.s. c 219 § 32.]

55 Wn LR 543 (1980) (Impact of common law and reform statutes on rape prosecutions. Wallace D. Loh).

70.125.020 Legislative findings—Program objectives

- (1) The legislature hereby finds and declares that:
 - (a) Sexual assault has become one of the most rapidly increasing violent crimes over the last decade;
 - (b) There is a lack of essential information and data concerning sexual assault;
 - (c) There is a lack of adequate training for law enforcement officers concerning sexual assault, the victim, the offender, and the investigation;

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(d) There is a lack of community awareness and knowledge concerning sexual assault and the physical and psychological impact upon the victim;
(e) There is a lack of public information concerning sexual assault prevention and personal self-protection;

(f) Because of the lack of information, training, and services, the victims of sexual assault are not receiving the assistance they require in dealing with the physical and psychological trauma of a sexual assault;

(g) The criminal justice system and health care system should maintain close contact and cooperation with each other and with community rape crisis centers to expedite the disposition of sexual assault cases; and

(h) Persons who are victims of sexual assault will benefit directly from increased public awareness and education, increased prosecutions, and a criminal justice system which treats them in a humane manner.

(2) Therefore, a state-wide sexual assault education, training, and consultation program should be developed. Such a state-wide program should seek to improve treatment of victims through information-gathering, education, training, community awareness programs, and by increasing the efficiency of the criminal justice and health care systems as they relate to sexual assault. Such a program should serve a consultative and facilitative function for organizations which provide services to victims and potential victims of sexual assault.

[Enacted Laws 1st Ex Sess 1979 ch 219 § 2, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

70.125.030 Definitions

As used in this chapter and unless the context indicates otherwise:

(1) "Department" means the department of social and health services.

(2) "Law enforcement agencies" means police and sheriff's departments of this state.

(3) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a rape crisis center.

(4) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

(5) "Secretary" means the secretary of the department of social and health services.

(6) "Sexual assault" means one or more of the following:

(a) Rape or statutory rape;

(b) Assault with intent to commit rape;

(c) Incest or indecent liberties; or

(d) An attempt to commit any of the aforementioned offenses.

(7) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault.

[Enacted Laws 1st Ex Sess 1979 ch 219 § 3, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

70.125.040 Coordinating office—State-wide plan

The department shall establish a centralized office within the department to coordinate activities of programs relating to sexual assault and to facilitate coordination and dissemination of information to personnel in fields relating to sexual assault.

The department shall develop, with the cooperation of the criminal justice training commission, the attorney general's office, the medical profession, and existing rape crisis centers, a state-wide plan to aid organizations which provide services to victims of sexual assault.

[Enacted Laws 1st Ex Sess 1979 ch 219 § 4, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

70.125.050 State-wide program services

The state-wide program established under RCW 70.125.040 shall include but not be limited to provision of the following services: *Provided*, That the department shall utilize existing rape crisis centers and contract, where appropriate, with these centers to provide the services identified in this section:

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(1) Assistance to the criminal justice training commission in developing and offering training and education programs for criminal justice personnel on the scope and nature of the sexual assault problem;

(2) Assistance to health care personnel in training for the sensitive handling and correct legal procedures of sexual assault cases;

(3) Development of public education programs to increase public awareness concerning sexual assault in coordination with the activities of the attorney general's crime prevention efforts; and

(4) Technical assistance and advice to rape crisis centers, including the organization of existing community resources, volunteer training, identification of potential funding sources, evaluation, and education. Assistance shall be given for the development of additional programs in areas of the state where such services do not exist.

[Enacted Laws 1st Ex Sess 1979 ch 219 § 5, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

70.125.060 Personal representative may accompany victim during treatment or proceedings

If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

[Enacted Laws 1st Ex Sess 1979 ch 219 § 6, effective September 1, 1979.]

Severability—1979 1st ex.s. c 219: See note following RCWA 70.125.010.

70.125.065 Records of rape crisis centers not available as part of discovery—Exceptions

Records maintained by rape crisis centers shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

(1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the rape crisis center's records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the rape crisis center's records;

(3) The court reviews the rape crisis center's records in camera to determine whether the rape crisis center's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

[Added by Laws 1981 ch 145 § 9.]

CJS Records § 40.

Key Number Digests: Records C-31.

70.125.070 Termination—June 30, 1985

The Victims' of Sexual Assault Act shall terminate on June 30, 1985, and shall be subject to all of the processes provided in RCW 43.131.010 through 43.131.110 as now existing or hereafter amended.

* * *

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CHAPTER 10.99

DOMESTIC VIOLENCE—OFFICIAL RESPONSE

Section

- 10.99.010 Purpose—Intent.
- 10.99.020 Definitions.
- 10.99.030 Law enforcement officers—Training—Duty—Arrest powers—Offense reports—Transportation of victims—Records.
- 10.99.040 Restrictions upon and duties of court in domestic violence actions.
- 10.99.050 Sentence restricting contact with victim—Recording—Copy to victim.
- 10.99.060 Notification of victim of prosecution decision—Description of procedures available to institute criminal proceedings.
- 10.99.070 Liability of peace officers.
- 10.99.900 Severability—1979 ex.s. c 105.

Law Review Commentaries

Wife beating. 15 Gonzaga L.Rev.
171 (1979).

10.99.010 Purpose—Intent

The purpose of this chapter is to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers. Only recently has public perception of the serious consequences of domestic violence to society and to the victims led to the recognition of the necessity for early intervention by law enforcement agencies. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior is not ex-

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cused or tolerated. Furthermore, it is the intent of the legislature that criminal laws be enforced without regard to whether the persons involved are or were married, cohabiting, or involved in a relationship.

Enacted by Laws 1979, Ex.Sess., ch. 105, § 1.

Library References

Criminal Law § 5.

C.J.S. Criminal Law § 13.

10.99.020 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cohabitant" means a person who is married or who is cohabiting with a person as husband and wife at the present time or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or lived together at any time, shall be treated as a cohabitant.

(2) "Domestic violence" includes but is not limited to any of the following crimes when committed by one cohabitant against another:

- (a) Assault in the first degree (RCW 9A.36.010);
- (b) Assault in the second degree (RCW 9A.36.020);
- (c) Simple assault (RCW 9A.36.040);
- (d) Reckless endangerment (RCW 9A.36.050);
- (e) Coercion (RCW 9A.36.070);
- (f) Burglary in the first degree (RCW 9A.52.020);
- (g) Burglary in the second degree (RCW 9A.52.030);
- (h) Criminal trespass in the first degree (RCW 9A.52.070);
- (i) Criminal trespass in the second degree (RCW 9A.52.080);
- (j) Malicious mischief in the first degree (RCW 9A.48.070);
- (k) Malicious mischief in the second degree (RCW 9A.48.080);
- (l) Malicious mischief in the third degree (RCW 9A.48.090);
- (m) Kidnapping in the first degree (RCW 9A.40.020);
- (n) Kidnapping in the second degree (RCW 9A.40.030); and
- (o) Unlawful imprisonment (RCW 9A.40.040).

(3) "Victim" means a cohabitant who has been subjected to domestic violence.

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10.99.030 Law enforcement officers—Training—Duty—Arrest powers—Offense reports—Transportation of victims—Records

(1) All training relating to the handling of domestic violence complaints by law enforcement officers shall stress enforcement of criminal laws in domestic situations, availability of community resources, and protection of the victim. Law enforcement agencies and community organizations with expertise in the issue of domestic violence shall cooperate in all aspects of such training.

(2) The primary duty of peace officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party.

(3)(a) When a peace officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, the peace officer may exercise arrest powers with reference to the criteria in RCW 10.31.100. The officer shall notify the victim of the victim's right to initiate a criminal proceeding in all cases where the officer has not exercised arrest powers or decided to initiate criminal proceedings by citation or otherwise. The parties in such cases shall also be advised of the importance of preserving evidence.

(b) A peace officer responding to a domestic violence call shall take a complete offense report including the officer's disposition of the case.

(4) The peace officer may offer, arrange, or facilitate transportation for the victim to a hospital for treatment of injuries or to a place of safety or shelter.

(5) The law enforcement agency shall forward the offense report to the appropriate prosecutor within ten days of making such report if there is probable cause to believe that an offense has been committed, unless the case is under active investigation.

(6) Each law enforcement agency shall make as soon as practicable a written record and shall maintain records of all incidents of domestic violence reported to it.

(7) Records kept pursuant to subsections (3) and (6) of this section shall be made identifiable by means of a departmental code for domestic violence.

10.99.040 Restrictions upon and duties of court in domestic violence actions

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: *Provided*, That the court may order a criminal defense attorney not to disclose to his client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any defendant charged with a crime involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may prohibit the defendant from having any contact with the victim. Wilful violation of a court order issued under this section is a misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 10.99 RCW. A certified copy of such order shall be provided to the victim.

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10.99.045 Appearances by defendant

(1) A defendant arrested for an offense involving domestic violence as defined by RCW 10.99.020(2) shall be required to appear in person before a magistrate within one judicial day after the arrest; or

(2) A defendant who is charged by citation, complaint, or information with an offense involving domestic violence as defined by RCW 10.99.020(2) and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

At the time of the appearances provided in subsection (1) or (2) of this section, the court shall determine the necessity of imposing a no contact order or other conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment. The decision of the judge and findings of fact in support thereof shall be in writing.

Appearances required pursuant to this section are mandatory and cannot be waived.

Added by Laws 1981, ch. 145, § 7.

10.99.055 Enforcement of orders restricting contact with victim

Any law enforcement agency in this state may enforce this chapter as it relates to orders restricting the defendants' ability to have contact with the victim.

* * *

CHAPTER 70.123—SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

Sections	Sections
70.123.010 Legislative findings.	70.123.040 Department to consult.
70.123.030 Definitions.	70.123.050 Contracts for shelter services.
70.123.030 Departmental duties and responsibilities.	70.123.100 Half of funding for shelters from local sources.
70.123.040 Minimum standards to provide basic survival needs.	70.123.110 Aid to families in shelters.
70.123.050 Contracts with nonprofit organizations—Purposes.	70.123.120 Liability for withholding services.
70.123.060 Report to the legislature.	70.123.900 Severability—1979 ex.s. c 348.
70.123.070 Duties and responsibilities of shelters.	

CJS Asylums § 1 et seq.
Key Number Digests: Asylums C-21.

70.123.010 Legislative findings

The legislature finds that domestic violence is an issue of growing concern at all levels of government and that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. Domestic violence is a disruptive influence on personal and community life and is often interrelated with a number of other family problems and stresses. Shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm and to help the victim find long-range alternative living situations, if requested. Shelters provide safety, refuge, advocacy, and helping resources to victims who may not have access to such things if they remain in abusive situations.

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The legislature therefore recognizes the need for the state-wide development and expansion of shelters for victims of domestic violence.
[Enacted Laws 1st Ex Sess 1979 ch 245 § 1, effective September 1, 1979.]

70.123.020 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Shelter" means a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

(2) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one cohabitant against another.

(3) "Department" means the department of social and health services.

(4) "Victim" means a cohabitant who has been subjected to domestic violence.

(5) "Cohabitant" means a person who is married or who is cohabiting with a person of the opposite sex like husband and wife at the present or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or lived together at any time, shall be treated as a cohabitant.

70.123.030 Departmental duties and responsibilities

The department of social and health services, in consultation with individuals or groups having experience and knowledge of the problems of victims of domestic violence, shall:

(1) Establish minimum standards for shelters applying for grants from the department under this chapter. Classifications may be made dependent upon size, geographic location, and population needs;

(2) Receive grant applications for the development and establishment of shelters for victims of domestic violence;

(3) Distribute funds, within forty-five days after approval, to those shelters meeting departmental standards;

(4) Evaluate biennially each shelter receiving departmental funds for compliance with the established minimum standards; and

(5) Review the minimum standards each biennium to ensure applicability to community and client needs.

[Enacted Laws 1st Ex Sess 1979 ch 245 § 3, effective September 1, 1979.]

70.123.040 Minimum standards to provide basic survival needs

Minimum standards established by the department under RCW 70.123.030 shall ensure that shelters receiving grants under this chapter provide services meeting basic survival needs, where not provided by other means, such as, but not limited to, food, clothing, housing, safety, security, client advocacy, and counseling. These services shall be problem-oriented and designed to provide necessary assistance to the victims of domestic violence and their children.

[Enacted Laws 1st Ex Sess 1979 ch 245 § 4, effective September 1, 1979.]

70.123.050 Contracts with nonprofit organizations—Purposes

The department shall contract, where appropriate, with public or private nonprofit groups or organizations with experience and expertise in the field of domestic violence to:

(1) Develop and implement an educational program designed to promote public and professional awareness of the problems of domestic violence and of the availability of services for victims of domestic violence. Particular emphasis should be given to the education needs of law enforcement agencies, the legal system, the medical profession, and other relevant professions that are engaged in the prevention, identification, and treatment of domestic violence;

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(2) Maintain a directory of temporary shelters and other direct service facilities for the victims of domestic violence which is current, complete, detailed, and available, as necessary, to provide useful referral services to persons seeking help on an emergency basis;

(3) Create a state-wide toll-free telephone number that would provide information and referral to victims of domestic violence;

(4) Provide opportunities to persons working in the area of domestic violence to exchange information; and

(5) Provide training opportunities for both volunteer workers and staff personnel.

* * *

70.123.060 Report to the legislature

The department shall prepare an annual report to the legislature which shall include but not be limited to:

(1) Data reflecting the geographic incidence of domestic violence in the state, indicating the number of cases officially reported as well as an assessment of the degree of unreported cases;

(2) The number of persons and relevant statistical data, where possible, of persons treated or assisted by shelters receiving state funds; and

(3) A listing of potential and feasible prevention efforts, the estimated cost of providing the prevention services, and the projected benefits of providing the services.

The department may contract, where applicable, for the information required by this section.

[Enacted Laws 1st Ex Sess 1979 ch 245 § 6, effective September 1, 1979.]

70.123.070 Duties and responsibilities of shelters

Shelters receiving state funds under this chapter shall:

(1) Make available shelter services to any person who is a victim of domestic violence and to that person's children;

(2) Encourage victims, with the financial means to do so, to reimburse the shelter for the services provided;

(3) Recruit, to the extent feasible, persons who are former victims of domestic violence to work as volunteers or staff personnel. An effort shall also be made to provide bilingual services;

(4) Provide prevention and treatment programs to victims of domestic violence, their children and, where possible, the abuser;

(5) Provide a day program or drop-in center to assist victims of domestic violence who have found other shelter but who have a need for support services.

[Enacted Laws 1st Ex Sess 1979 ch 245 § 7, effective September 1, 1979.]

70.123.080 Department to consult

The department shall consult in all phases with persons and organizations having experience and expertise in the field of domestic violence.

[Enacted Laws 1st Ex Sess 1979 ch 245 § 8, effective September 1, 1979.]

70.123.090 Contracts for shelter services

The department is authorized, under this chapter and the rules adopted to effectuate its purposes, to make available grants awarded on a contract basis to public or private nonprofit agencies, organizations, or individuals providing shelter services meeting minimum standards established by the department. Consideration as to need, geographic location, population ratios, and the extent of existing services shall be made in the award of grants.

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The department shall provide technical assistance to any nonprofit organization desiring to apply for the contracts if the organization does not possess the resources and expertise necessary to develop and transmit an application without assistance.
 [Enacted Laws 1st Ex Sess 1979 ch 245 § 8, effective September 1, 1979.]
 CJS Social Security and Public Welfare §§ 4, 7.
 Key Number Digests: Social Security and Public Welfare §-8.

70.123.100 Half of funding for shelters from local sources

Fifty percent of the funding for shelters receiving grants under this chapter must be provided by one or more local, municipal, or county source,

either public or private. Contributions in-kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part of the required local funding.
 The department shall seek, receive, and make use of any funds which may be available from federal or other sources in order to augment state funds appropriated for the purpose of this chapter, and shall make every effort to qualify for federal funding.
 [Enacted Laws 1st Ex Sess 1979 ch 245 § 10, effective September 1, 1979.]

70.123.110 Aid to families in shelters

General assistance or aid to families with dependent children payments shall be made to otherwise eligible individuals who are residing in a secure shelter, a housing network or other shelter facility which provides shelter services to persons who are victims of domestic violence. Provisions shall be made by the department for the confidentiality of the shelter addresses where victims are residing.
 [Enacted Laws 1st Ex Sess 1979 ch 245 § 11, effective September 1, 1979.]
 CJS Social Security and Public Welfare §§ 116, 117.
 Key Number Digests: Social Security and Public Welfare §-194.1.

70.123.120 Liability for withholding services

A shelter shall not be held liable in any civil action for denial or withdrawal of services provided pursuant to the provisions of this chapter.
 [Enacted Laws 1st Ex Sess 1979 ch 245 § 12, effective September 1, 1979.]

70.123.900 Severability--1979 ex.s. c 245

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.
 [Enacted Laws 1st Ex Sess 1979 ch 245 § 15, effective September 1, 1979.]

Category	Citation
1. Victim Compensation Program	14A-2A-1 et seq.
1.1 Responsible Agency	14A-2A-5 et seq.
1.2 Eligible Claimants	14-2A-14(c),(d),(e)
1.3 Losses Covered	14A-2A-3(e), 14A-2A-5
1.4 Minimum and Maximum Award	14A-2A-14(g)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	14-2A-14(b)
1.7 Filing of Claim - Time Limit	14-2A-14(a)
1.8 Emergency Award	
1.9 Funding	14-2A-4
2. Restitution	
2.1 Sentencing Option	62-12-9(3)(1)
2.2 Mandatory Condition of Probation	
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	59-1-16; 62-5-1
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	61-5-27
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	14-2A-25
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	62-1A-7
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	48-2A-1, 48-2A-6 et seq.
14.2 Domestic Violence Shelters	48-2C-1 et seq.
14.3 Domestic Violence Reporting	48-2A-9
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	14-2A-21 (reports on reparations claims); 48-2C-7 (by domestic violence shelters)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	14-2A-16(c)
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	
15.4 Sexual Assault Counselor Privilege	

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West Virginia Code

ARTICLE 2A.

REPARATION AWARDS TO VICTIMS OF CRIMES.

Sec.	Sec.
14-2A-1. Short title.	evaluation of claim by judge or commissioner.
14-2A-2. Purpose and intent.	14-2A-14. Grounds for denial of claim or reduction of award.
14-2A-3. Definitions.	14-2A-15. Hearings.
14-2A-4. Crime victims reparation fund.	14-2A-16. Evidence.
14-2A-5. Jurisdiction.	14-2A-17. Contempt sanction not available.
14-2A-6. Appointment and compensation of commissioners and judges serving under this article.	14-2A-18. Effect of prosecution or conviction of offender.
14-2A-7. Qualifications of commissioners.	14-2A-19. Attorney and witness fees.
14-2A-8. Commissioner's oath of office.	14-2A-20. Procedure for certification and payment of claims.
14-2A-9. Position of reparations investigator established; transfer of duties from attorney general; compensation and expenses.	14-2A-21. Annual report of court of claims.
14-2A-10. Filing of application for reparation award; filing fee; contents.	14-2A-22. State's subrogation to claimant's rights.
14-2A-11. Procedure for filing of application; indigent applicants.	14-2A-23. Subrogation rights of collateral source.
14-2A-12. Investigation and recommendations by reparations investigator.	14-2A-24. Award not subject to execution or attachment; exceptions.
14-2A-13. Notice to claimant of reparations investigator's recommendation;	14-2A-25. Publicity.
	14-2A-26. Rules and regulations.
	14-2A-27. Application of article; expiration.

§ 14-2A-1. Short title.

This article shall be known and cited as the "West Virginia Crime Reparation Act of 1981." (1981, c. 61.)

§ 14-2A-2. Purpose and intent.

The legislature finds and declares that a primary purpose of government is to provide for the safety of citizens and the inviolability of their property. To the extent that innocent citizens are victims of crime, particularly violent crime, and are without adequate redress for injury to their person or property, this primary purpose of government is defeated. The people of West Virginia are demonstrably peaceful, and, in comparison to the citizens of other states, suffer a lower crime rate. Despite this history, the government of this State has not fully met the expectations of its citizens to be free of the devastating effects of criminal conduct by a small percentage of their fellow citizens; therefore, the legislature desires to develop and perfect a system of reparations for the victims of crime to partially address the fact that the present and existing tools of crime prevention and correction are not wholly effective. This act of the legislature is designed as an experimental effort of the legislature of this State on behalf of its people, to provide a partial remedy for the failure of the State to fully achieve the primary purpose of government herein described. The demonstration project envisioned by this article is constructed to provide a

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system of reparations which is within the resources of our society. Being experimental, this project should be fully within the control of the legislature as the repository of the powers of the people and be subject to review and perfection by the legislature during its initial experimental stages. The system herein provided should be fully reviewed in a reasonable time and, if successful, made a permanent part of the system of government. Pending the full development of a more complete system of reparations the system should be retained in the legislative branch as an expression of a moral obligation of the State, deferring to a later date consideration of the question of whether such remedy should be defined as an enforceable legal right of each of the citizens of this State and the citizens of other states entitled to the same privileges and immunities of our citizens. Pending such full development, no privilege herein granted shall be deemed to be a vested right of any citizen, but this article shall rather be a means of defining and presenting, for legislative consideration, the nature and extent of the moral obligation of this State and its ability to afford reparations to its law-abiding citizens who suffer from the effect of violent criminal conduct. (1981, c. 61.)

Effective date. — Acts 1981; c. 61 takes effect July 1, 1981.

§ 14-2A-3. Definitions.

As used in this article, the term:

- (a) "Claimant" means any of the following persons who claim an award of reparations under this article:
 - (1) A victim;
 - (2) A dependent of a deceased victim;
 - (3) A third person other than a collateral source;
 - (4) A person who is authorized to act on behalf of a victim, a dependent, or a third person who is not a collateral source.
- (b) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to him, from any of the following sources:
 - (1) The offender;
 - (2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;
 - (3) Social security, medicare, and medicaid;
 - (4) State-required, temporary, nonoccupational disability insurance;
 - (5) Workmen's compensation;
 - (6) Wage continuation programs of any employer;
 - (7) Proceeds of a contract of insurance payable to the victim for loss that he sustained because of the criminally injurious conduct;
 - (8) A contract providing prepaid hospital and other health care services, or benefits for disability.
- (c) "Criminally injurious conduct" means conduct that occurs or is attempted in this State which by its nature poses a substantial threat of

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personal injury or death, and is punishable by fine or 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 the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct is shown under this article to have committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

(d) "Dependent" means an individual wholly or partially dependent upon the victim for care and support, and includes a child of the victim born after his death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

(f) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of five hundred dollars 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 home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) "Work loss" means loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred by him to obtain 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 appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

(h) "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.

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

(j) "Dependent's replacement service loss" means loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason

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of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.

(l) "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-4. Crime victims reparation fund.

Every person within the State who is convicted of or pleads guilty to a misdemeanor or felony offense, other than a traffic offense that is not a moving violation, shall pay the sum of three dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon such convicted person. The clerk of the circuit court, magistrate court, or municipal court wherein such additional costs are imposed shall, on or before the last day of each month, transmit all such costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "crime victims reparation fund," which is hereby created. All moneys collected and received under this article and paid into the state treasury and credited to the "crime victims reparation fund" in the manner prescribed in section two [§ 12-2-2], article two, chapter twelve of this Code, shall be kept and maintained for appropriation by the legislature for the specific purposes of this article, and shall not be treated by the auditor and treasurer as part of the general revenue of the State. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-5. Jurisdiction.

Any judge of the court of claims individually, or the court of claims en banc, or any court of claims commissioner appointed pursuant to section six [§ 14-2A-6] of this article, shall have jurisdiction to approve awards of reparations for economic loss arising from criminally injurious conduct, in accordance with the provisions of this article, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

(a) The court of claims, with the approval of the president of the senate and the speaker of the house of delegates, may appoint court of claims commis-

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sioners to hear claims for awards of reparations and to approve awards of reparations pursuant to the provisions of this article. Each commissioner shall serve at the pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims.

(b) The court of claims shall fix the compensation of the court of claims commissioners in an amount not exceeding the compensation for judges of the court of claims. Compensation of judges and commissioners for services performed under this article, and actual expenses incurred in the performance of duties as judges and commissioners under this article shall be paid out of the crime victims reparation fund.

(c) The limitation period of one hundred days in section eight [§ 14-2-8], article two of this chapter pertaining to time served by the judges of the court of claims shall not apply to the provisions of this article. (1981, c. 61; 1982, c. 27; 1983, c. 57.)

Cross reference. — Compensation of judges, § 14-2-8.

Effect of amendment of 1982. — The amendment, effective March 12, 1982, added subsection (c).

Effect of amendment of 1983. — The amendment, effective March 12, 1983, in the first sentence of subsection (a) substituted

"may" for "shall" following "house of delegates," deleted "at least three" preceding "court of claims," substituted "claims for awards" for "claims for an award," and inserted "and to approve awards of reparations."

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-7. Qualifications of commissioners.

Each commissioner appointed by the court of claims shall be an attorney-at-law, licensed to practice in this State, and shall have been so licensed to practice law for a period of not less than three years prior to his appointment as commissioner. A commissioner shall not be an officer or an employee of any branch of state government, except in his capacity as commissioner of the court. A commissioner shall not hear or participate in the consideration of any claim in which he is interested personally, either directly or indirectly. When practicable, the commissioners should be selected from different congressional districts and be geographically located, with reference to their counties of residence, to facilitate the appearance of claimants and witnesses at hearings held pursuant to this article. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-8. Commissioner's oath of office.

Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath prescribed by section five, article four of the constitution of the State. The oath shall be filed with the clerk. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-9. Position of reparations investigator established;

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transfer of duties from attorney general; compensation and expenses.

There is hereby established within the office of the clerk of the court of claims the position of reparations investigator, who shall carry out the functions and duties set forth in section twelve [§ 14-2A-12] of this article. The duties of the attorney general under the prior enactment of section twelve of this article are hereby transferred to the reparations investigator. The reparations investigator shall serve at the pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims. The compensation of the reparations investigator shall be fixed by the court, and such compensation, together with travel, clerical and other expenses of the clerk of the court of claims relating to the reparations investigator carrying out his duties under this article, shall be payable from the crime victims reparation fund as appropriated for such purpose by the legislature. (1981, c. 61; 1982, c. 27; 1983, c. 57.)

Effect of amendment of 1982. — The amendment, effective March 12, 1982, added the former second sentence.

Effect of amendment of 1983. — The amendment, effective March 12, 1983, rewrote article shall be payable from the crime victims reparation fund as appropriated for such purpose by the legislature."

this section which read: "The attorney general shall represent the interests of the State in all claims coming before the court of claims or a commissioner. Expenses of the attorney general relating to carrying out his duties under this Effective dates. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-10. Filing of application for reparation award; filing fee; contents.

(a) A claim for an award of reparations shall be commenced by filing an application for an award of reparations with the clerk of the court of claims. Each application shall be accompanied by a filing fee of ten dollars unless waived pursuant to subsection (b), section eleven [§ 14-2A-11(b)] of this article. The application shall be in a form prescribed by the clerk of the court of claims, and shall contain the following information:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant, and the relationship of the claimant to the victim;

(2) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(3) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(4) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

(5) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which reparations are sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died

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as a result of the injuries;

(6) The total amount of the economic loss that the victim, a dependent or the claimant sustained as a result of the criminally injurious conduct, without regard to the financial limitation set forth in subsection (g), section fourteen [§ 14-2A-14(g)] of this article.

(7) The amount of benefits or advantages that the victim, a dependent or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;

(8) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(9) A release authorizing the court of claims, the court of claims commissioners and the reparations investigator to obtain any report, document or information that relates to the determination of the claim for an award of reparations;

(10) Any additional relevant information that the court of claims may require. The court of claims may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

(b) All applications for an award of reparations shall be filed within two years after the occurrence of the criminally injurious conduct that is the basis of the application.

(c) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or a state officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent application, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of violation of this section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he shall, in addition, forfeit his office or position of employment, as the case may be. (1981, c. 61; 1983, c. 57.)

Effect of amendment of 1983. — The amendment, effective March 12, 1983, in subdivision (a)(9) substituted "reparations investigator" for "staff of the attorney general." Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-11. Procedure for filing of application; indigent applicants.

(a) The clerk of the court of claims shall establish a procedure for the filing, recording and processing of applications for an award of reparations.

(b) If an applicant files an affidavit stating that he is an indigent person and that payment of the filing fee would create a financial hardship for him, the clerk, pursuant to rules established by the court of claims, may accept the application for filing without payment of the filing fee. If the application is accepted without payment of the filing fee and an award is made pursuant to the application, the amount of the award shall be reduced by the amount of the filing fee. (1981, c. 61.)

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Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-12. Investigation and recommendations by reparations investigator.

(a) The clerk of the court of claims shall transmit a copy of the application to the reparations investigator within seven days after the filing of the application.

(b) The reparations investigator, upon receipt of an application for an award of reparations from the clerk of the court of claims, shall investigate the claim. After completing the investigation, the reparations investigator shall make a written finding of fact and recommendation concerning an award of reparations. He shall file with the clerk the finding of fact and recommendation and all information or documents that he used in his investigation.

(c) The reparations investigator while investigating the claim, may require the claimant to supplement the application for an award of reparations with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts aiding in the determination of whether, and the extent to which, a claimant qualifies for an award of reparations. The reparations investigator may depose any witness, including the claimant, in the same manner as witnesses are deposed under the rules of civil procedure for trial courts of record.

In any case wherein the reparations investigator has reason to believe that his investigation may interfere with or jeopardize an investigation of a crime by law-enforcement officers, he may apply to the court of claims or a judge or commissioner thereof for an order granting leave to discontinue his investigation for a reasonable time in order to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the reparations investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred, and the exact nature of the conduct;

(2) If the criminally injurious conduct was reported to a law-enforcement officer or agency, the date on which the conduct was reported and the name of the person who reported the conduct; or, the reasons why the conduct was not reported to a law-enforcement officer or agency; or, the reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-two hours after the conduct occurred;

(3) The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;

(4) A specific itemization of the economic loss that was sustained by the victim, the claimant or a dependent as a result of the criminally injurious conduct;

(5) A specific itemization of any benefits or advantages that the victim, the claimant or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;

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(6) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(7) Any additional information that the reparations investigator deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the reparations investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether an award of reparations should be made to the claimant and the amount of the award.

(2) If the reparations investigator recommends that an award not be made to the claimant, the reason for his decision.

(f) The reparations investigator shall file his finding of fact and recommendation with the clerk within sixty days after the filing of the application, or within such additional time period as may be provided by order of any court of claims judge or commissioner upon good cause shown, but in no event later than six months after such filing. (1981, c. 61; 1983, c. 57.)

Effect of amendment of 1983. — The amendment, effective March 12, 1983, substituted "reparations investigator" for "attorney general" throughout the section, substituted "transmit" for "send" in subsection (a), and added the second paragraph to subsection (c).
Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-13. Notice to claimant of reparations investigator's recommendation; evaluation of claim by judge or commissioner.

(a) The clerk of the court of claims, upon receipt of the reparations investigator's finding of fact and recommendation, shall forward a copy of the finding of fact and recommendation to the claimant with a notice informing the claimant that any response, in the form of objections or comments directed to the finding of fact and recommendation, must be filed with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day period, the clerk shall assign the claim to a judge or commissioner of the court.

(b) The judge or commissioner to whom the claim is assigned shall review the finding of fact and recommendation and any response submitted by the claimant and, if deemed appropriate, may request the reparations investigator to comment in writing on the claimant's response. The judge or commissioner shall, within forty-five days after assignment by the clerk, evaluate the claim without a hearing and either deny the claim or approve an award of reparations to the claimant. (1981, c. 61; 1983, c. 57.)

Effect of amendment of 1983. — The amendment, effective March 12, 1983, substituted "reparations investigator's" for "attorney general's" in subsection (a) and "reparations investigator" for "attorney general" in subsection (b).
Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-14. Grounds for denial of claim or reduction of award.

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(a) The judge or commissioner shall not approve an award of reparations to a claimant who did not file his application for an award of reparations within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he is seeking an award of reparations.

(b) An award of reparations shall not be approved if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(c) The judge or commissioner shall not approve an award of reparations to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his accomplice. Unless a determination is made that the interests of justice require that an award be approved in a particular case, an award of reparations shall not be made to the spouse of, or to a person living in the same household with, the offender or accomplice of the offender, or to the parent, child, brother or sister of the offender or his accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, may deny a claim, reduce an award of reparations, and may reconsider a claim already approved.

(e) An award of reparations shall not be approved if the injury occurred while the victim was confined in any state, county or city jail, prison or correctional facility.

(f) After reaching a decision to approve an award of reparation, but prior to announcing such approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of reparations or deny a claim for an award of reparations that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if such reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: Provided, that if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) Reparations payable to a victim and to all other claimants sustaining economic loss because of injury to or the death of that victim shall not exceed twenty thousand dollars in the aggregate. (1981, c. 61; 1983, c. 57.)

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§ 14-2A-15. Hearings.

(a) If either the reparations investigator or the claimant disagrees with the approval of an award or the denial of a claim in the summary manner set forth in the preceding sections of this article, the reparations investigator or the claimant, or both, shall file with the clerk a request for hearing. Such request shall be filed within twenty-one days after notification by the judge or commissioner of his decision.

(b) Upon receipt of a request for hearing, the clerk shall place the claim upon the regular docket of the court for hearing, shall advise the reparations investigator and the claimant of the receipt of the request and docketing of the claim, and shall request the reparations investigator to commence negotiations with the claimant.

(c) During the period of negotiations and pending hearing, the reparations investigator, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts an attempt shall be made to stipulate the questions of fact in issue.

(d) The hearing held in accordance with this section shall be before a single judge or commissioner to whom the claim has not been previously assigned. Hearings before a judge or commissioner may, in the discretion of such hearing officer, be held at such locations throughout the State as will facilitate the appearance of the claimant and witnesses.

(e) The hearing shall be conducted so as to disclose all material facts and issues. Judges and commissioners may examine or cross-examine witnesses. The judges and commissioners may call witnesses or require evidence not produced by the parties; may stipulate the questions to be argued by the parties; and may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(f) After the close of the hearing the court, judge or commissioner, as the case may be, shall consider the claim and shall conclude its determination, if possible, within thirty days.

(g) The court shall adopt and may from time to time amend rules of procedure, in accordance with the provisions of this article, governing proceedings before the court. Rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. Rules shall permit a claimant to appear in his own behalf or be represented by counsel.

Under its rules, the court shall not be bound by the usual common law or statutory rules of evidence. The court may accept and weigh, in accordance with its evidential value, any information that will assist the court in determining the factual basis of a claim. (1981, c. 61; 1983, c. 57.)

Cross reference. — For specific evidentiary rules, see § 14-2A-16.

Effect of amendment of 1983. — The amendment, effective March 12, 1983, substituted "reparations investigator" for "attorney

such hearing shall be held before the two remaining judges and a commissioner: Provided, that if the amount of the economic loss alleged in the application is less than ten thousand dollars, the hearing may be held

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general" in subsections (a) — (c), and in the first sentence of subsection (d) deleted "the court of claims, en banc, or, if the claim was previously assigned to and decided by a judge of the court,

before" preceding "a single judge or commissioner."

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-16. Evidence.

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

(b) If the mental, physical or emotional condition of a victim or claimant is material to a claim for an award of reparations, the court, judge or commissioner 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 and upon notice to the person to be examined and to the claimant and the reparations investigator. 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 who performs the examination or autopsy to file with the clerk of the court of claims a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the clerk of the court of claims shall furnish him a copy of the report. If the victim is deceased, the clerk of the court of claims, on request, shall furnish the claimant a copy of the report.

(c) The court, or a judge or commissioner thereof, may order law-enforcement officers employed by the State or any political subdivision thereof to provide it or the reparations investigator with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of reparations.

(d) The court, or a judge or commissioner thereof, may require the claimant to supplement the application for an award of reparations with any reasonably available medical or psychological reports relating to the injury for which the award of reparations is claimed.

(e) The court, a judge, a commissioner or the reparations investigator, in a claim arising out of a violation of article eight-B [§ 61-8B-1 et seq.], chapter sixty-one of this Code, shall not request the victim or the claimant to supply any evidence of specific instances of the victim's activity, or reputation evidence of the victim's sexual activity unless it involves evidence of the victim's past sexual activity with the offender and then only to the extent that the court, the commissioner or the reparations investigator finds that the evidence is relevant to a fact at issue in the claim.

(f) Notwithstanding any provision of this Code to the contrary relating to the confidentiality of juvenile records, the court of claims, a judge or commissioner thereof or the reparations investigator shall have access to the records of

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juvenile proceedings which bear upon an application for reparations under this article. The court of claims, the judges and commissioners thereof and the reparations investigator, shall, to the extent possible, maintain the confidentiality of juvenile records. (1981, c. 61; 1983, c. 57.)

Cross reference. — General evidentiary rules, § 14-2A-15(g).

Effect of amendment of 1983. — The amendment, effective March 12, 1983, substituted "reparations investigator" for "attorney

general" in subsections (b), (c), (e), and (f), and in subsection (e) deleted "sexual" preceding "activity, or reputation."

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-17. Contempt sanction not available.

If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of reparations, the court, judge or commissioner may make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his powers and duties, the reparations investigator may petition the court of claims for an appropriate order, but the court of claims shall not find a person in contempt for refusal to submit to a mental or physical examination. (1981, c. 61; 1983, c. 57.)

Effect of amendment of 1983. — The amendment, effective March 12, 1983, substituted "reparations investigator" for "attorney

general" in the second sentence.

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-18. Effect of prosecution or conviction of offender.

The court, or a judge or commissioner thereof, may approve an award of reparations whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave 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.

The court, or a judge or commissioner thereof, shall suspend, upon a request of the reparations investigator, the proceedings in any claim for an award of reparations pending disposition of a criminal prosecution that has been commenced or is imminent. (1981, c. 61; 1983, c. 57.)

Effect of amendment of 1983. — The amendment, effective March 12, 1983, substituted "reparations investigator" for "attorney

general" in the second paragraph.

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-19. Attorney and witness fees.

(a) As part of an order, the court, or a judge or commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid from the crime victims reparation fund to the attorney representing a claimant in a proceeding under this article. Attorney's fees may

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be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees shall be in addition to awards of reparations and attorney's fees may be awarded whether or not an award of reparations is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section.

(b) Each witness called by the court to appear in a hearing on a claim for an award of reparations shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen [§ 59-1-16], article one, chapter fifty-nine of this Code, to be paid from the crime victims reparation fund. (1981, c. 61.)

§ 14-2A-20. Procedure for certification and payment of claims.

(a) The clerk shall certify to the department of finance and administration, on or before the twentieth day of November of each year, a list of all claims pursuant to this article for which the court has made a final determination and approved an award since the last such certificate.

(b) The governor shall include in his proposed budget bill and revenue estimates:

(1) An estimate of the balance and receipts anticipated in the crime victims reparation fund,

(2) An itemized report of the approved awards recommended by the court to the legislature,

(3) Such recommendations to the legislature for appropriations from the crime victims reparation fund as he may deem appropriate for the payment of fees, costs and expenses incurred, due or payable at any time from such fund, and

(4) Such recommendations to the legislature for appropriations for the payment of claims arising under this article, whether accrued and determined by the court and included in the itemization of awards mentioned in this section or arising during the ensuing fiscal year.

(c) The legislature shall, by general law, provide for the authorization to pay the itemized awards arising under this article or so much thereof as may be deemed appropriate or for awards arising during the ensuing fiscal year and provide by appropriation from the crime victims reparation fund for the payment of such awards authorized and for the payment of fees, costs and expenses as from time to time may be appropriate. The clerk shall certify each authorized award and the amount thereof and make requisition upon the crime victims reparation fund relating thereto, to the auditor. The auditor shall issue his warrant to the treasurer without further examination or review of the claim except for the question of a sufficient unexpended balance in the appropriation. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

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§ 14-2A-21. Annual report of court of claims.

The court of claims shall prepare and transmit annually to the governor and the legislature a report of the activities of the court of claims under this article. The report shall include the number of claims filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied including the average size of claims and awards; the balance in the crime victims reparation fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the court of claims, compensation of judges, commissioners and court personnel and the amount awarded as attorneys' fees. (1981, c. 61; 1982, c. 27.)

Effect of amendment of 1982. — The amendment, effective March 12, 1982, deleted from the end of the section "and the amount withdrawn by the attorney general after certification of his costs of investigation and recommendation. The attorney general and auditor of

the State shall assist the court of claims in the preparation of the report required by this section."

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-22. State's subrogation to claimant's rights.

If an award of reparations is made under the provisions of this article and is not reduced on account of the availability of payment by a collateral source, the State, upon the payment of the award or a part of the award, shall be subrogated to all of the claimant's rights to receive or recover benefits or advantages for economic loss for which an award of reparations was made from such source if it were a collateral source or would be a collateral source if it were readily available to the victim or claimant. The claimant may sue the offender for any damages or injuries caused by the offender's criminally injurious conduct and not compensated for by an award of reparations. The claimant may join with the attorney general as co-plaintiff in any action against the offender. All moneys that are collected by the State pursuant to its rights of subrogation as provided in this section shall be deposited in the crime victims reparation fund. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-23. Subrogation rights of collateral source.

Subrogation rights which a collateral source may have shall not extend to a recovery from a claimant of all or any part of an award made under this article. A collateral source may not apply, in the name of a claimant or otherwise, for an award of reparations based upon injury to a claimant to whose rights the collateral source may be subrogated. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

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§ 14-2A-24. Award not subject to execution or attachment; exceptions.

An award is not subject to execution, attachment, garnishment, or other process, except that, upon receipt of an award by a claimant, the part of the award that is for allowable expense is not exempt from such action by a creditor to the extent that he provides products, services or accommodations the costs of which are included in the award and the part of the award that is for work loss shall not be exempt from such action to secure payment of alimony, maintenance or child support. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-25. Publicity.

(a) The clerk of the court of claims shall prepare an information brochure for the benefit of the general public, outlining the rights of claimants and procedures to be followed under this article. Copies of such brochure shall be distributed to law-enforcement agencies in the State, and be made available to other interested persons.

(b) Any law-enforcement agency that investigates an offense committed in this State involving personal injury, shall make reasonable efforts to provide information to the victim of the offense and his dependents concerning the availability of an award of reparations and advise such persons that an application for an award of reparations may be obtained from the clerk of the court of claims. (1981, c. 61; 1983, c. 57.)

Effect of amendment of 1983. — The amendment, effective March 12, 1983, in the first sentence of subsection (a) deleted "with the assistance of the attorney general" preceding

"shall prepare an information brochure."

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-26. Rules and regulations.

The court of claims may promulgate rules and regulations to implement the provisions of this article. (1981, c. 61.)

Effective date. — Acts 1981, c. 61 takes effect July 1, 1981.

§ 14-2A-27. Application of article; expiration.

(a) The provisions of this article shall not apply to any injury or death resulting from criminally injurious conduct which occurred on or before the thirty-first day of December, one thousand nine hundred eighty-one, or on or after the first day of January, one thousand nine hundred eighty-six.

(b) Any and all funds remaining in the crime victims reparation fund after the payment of claims under this article shall on the first day of July, one thousand nine hundred eighty-seven, revert to the general revenue fund. (1981, c. 61.)

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§ 62-12-9. Conditions of release on probation.

Release on probation shall be upon the following conditions:

(1) That the probationer shall not, during the term of his probation, violate any criminal law of this or any other State, or of the United States.

(2) That he shall not, during the term of his probation, leave the State without the consent of the court which placed him on probation.

(3) That he shall comply with the rules and regulations prescribed by the court or by the board of probation and parole, as the case may be, for his supervision by the probation officer.

In addition, the court may impose, subject to modification at any time, any other conditions which it may deem advisable, including, but not limited to, any of the following:

(1) That he shall make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he has been convicted.

(2) That he shall pay any fine assessed and the costs of the proceeding in such installments as the court may direct.

(3) That he shall make contribution from his earnings, in such sums as the court may direct, for the support of his dependents.

§ 59-1-16. Amount of allowance to witnesses for attendance; how and when made.

A person attending any court or other tribunal, under a summons or recognizance as a witness, shall receive not less than ten nor more than twenty dollars, to be fixed by the court or other tribunal, for each day's attendance and fifteen cents per mile for each mile necessarily traveled to the place of attendance, and the same for returning, plus all necessary bridge, ferry and road tolls. On his oath, an entry of the sum he is entitled to, and for what, and by what party it is to be paid, shall be made. When the attendance is before either house or a committee of the legislature, such entry shall be made by the clerk of such house or the chairman of such committee, and in other cases by the clerk of the court or other tribunal before which, or by the person before whom, the witness attended. A witness summoned or recognized to attend in several cases may have the entry made against any one of the parties by whom he is summoned, or for whom he is sworn as a witness, but no witness shall be allowed for his attendance in more than one case at the same time. But no compensation shall be allowed to a witness before a grand jury. This section shall not apply to witnesses before justices of the peace. (Code 1849, c. 176, § 35; Code 1860, c. 176, § 36; 1866, c. 15, § 36; Code 1868, c. 130, § 40; 1877, c. 9, § 40; 1882, c. 160, § 40; Code 1923, c. 130, § 40; 1975, c. 126.)

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§ 62-5-1. Payment of witnesses.

Sections sixteen and seventeen [§§ 59-1-16 and 59-1-17] of article one, and section sixteen [§ 59-2-16] of article two, chapter fifty-nine of this Code shall apply to a person attending as a witness under a recognizance or summons in a criminal case whether the same be a felony or misdemeanor, as well as to a person attending under a summons in a civil case, except that in a criminal case, a person residing out of this State, who attends a court therein as a witness, shall be allowed by such court a proper compensation for attendance and travel to and from the place of his abode; the amount of the same to be fixed by such court. Such compensation and other allowances shall, in all criminal cases be paid out of the treasury of the State. (Code 1849, c. 210, § 4; Code 1860, c. 210, § 4; Code 1868, c. 161, § 4; Code 1923, c. 161, § 4; 1975, c. 126.)

* * *

§ 61-5-27. Intimidation of judicial officers, jurors and witnesses; obstructing, etc., administration of justice; penalty.

If any person by threats, force, or otherwise, intimidate or impede, or attempt to intimidate or impede, any judge, justice of the peace, juror, witness, arbitrator, umpire, or an officer or member of any court in the discharge of his duty as such, or by any means obstruct or impede, or attempt to obstruct or impede, the administration of justice in any court, he shall be guilty of a misdemeanor, and, upon conviction thereof, unless otherwise provided by law, he shall be fined not less than twenty-five nor more than two hundred dollars, and be imprisoned in the county jail not exceeding six months. (Code 1849, c. 194, § 27; Code 1860, c. 194, § 27; Code 1868, c. 147, § 30; 1882, c. 134; Code 1923, c. 147, § 30.)

* * *

§ 62-1A-7. Disposition of seized property.

Property taken pursuant to the warrant shall be preserved as directed by the court or magistrate for use as evidence and thereafter shall be returned, destroyed or otherwise disposed of as the court or magistrate may direct. (1965, c. 38.)

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ARTICLE 2A.

PREVENTION OF DOMESTIC VIOLENCE.

Sec.	Sec.
48-2A-1. Purpose.	48-2A-5. Temporary orders of court; hearings.
48-2A-2. Definitions.	48-2A-6. Protective orders.
48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.	48-2A-7. Contempt.
48-2A-4. Commencement of proceeding; counterclaim.	48-2A-8. Testimony of husband and wife.

§ 48-2A-1. Purpose.

The purpose of this article is to prevent continuing abuse of one family or household member at the hands of other family or household member. Nothing contained in this article shall be construed as affecting the abused party's rights of action or claims which are otherwise provided for in this Code or by common law. An abusing party will remain subject to a damage claim or charges of criminal conduct. It is the intent of the legislature to provide temporary and immediate relief for an abused party so that he or she may make rational decisions regarding their future, thus enabling them to initiate procedures for appropriate permanent remedies. It is further intended that no proceeding under this article shall be initiated during the pendency of a divorce action between the person seeking relief under the provisions of this article and the alleged defendant. (1979, c. 34.)

§ 48-2A-2. Definitions.

As used in this article, unless the context clearly requires otherwise:

(a) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury with or without a dangerous or deadly weapon.

(2) Placing by physical menace another in fear of imminent serious bodily injury.

(3) Sexually abusing a person under the age of eighteen years.

(b) "Family or household members" means spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, or other persons related by consanguinity or affinity.

(c) "Sexual abuse" shall have the same meaning as the definitions of "sexual assault" and "sexual abuse" in article eight-B [§ 61-8B-1 et seq.], chapter sixty-one of this Code. (1979, c. 34.)

§ 48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.

Circuit courts and magistrate courts, as constituted under chapter fifty of

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this Code, shall have concurrent jurisdiction over proceedings under this article. The complaining party's right to relief under this article shall not be affected by his or her leaving the residence or household to avoid further abuse. Any petition filed under the provisions of this article shall be given priority over any other civil action before the court except actions in which trial is in progress, and shall be docketed immediately upon filing. (1979, c. 34.)

§ 48-2A-4. Commencement of proceeding; counterclaim.

(1) A person may seek relief under this article for himself or herself, or any parent or adult household member may seek relief under this article on behalf of a minor child, by filing a verified petition alleging abuse by the respondent.

(2) The West Virginia supreme court of appeals shall prescribe the form to be used for preparing a petition under this article, and shall distribute such forms to the clerk of the circuit court of each county within the State.

(3) The respondent named in any petition alleging abuse may file a counterclaim or raise any affirmative defenses. (1979, c. 34.)

§ 48-2A-5. Temporary orders of court; hearings.

(1) Upon filing of a verified petition under this article, the court may enter such temporary orders as it may deem necessary to protect the complainant or minor children from abuse, and, upon good cause shown, may do so ex parte without the necessity of bond being given by the plaintiff. Clear and convincing evidence of immediate and present danger of abuse to the complainant or minor children shall constitute good cause for purposes of this section. If the defendant is not present at the proceeding, complainant or complainant's legal representative shall certify to the court in writing, the efforts which have been made to give notice to the defendant or just cause why notice should not be required. Following such proceeding, the court shall order a copy of the petition to be served immediately upon the defendant, together with a copy of any protective order issued pursuant to the proceeding, notice setting forth the time and place of the full hearing and a statement of the right of the defendant to be present and to be represented by counsel. Such initial protective order shall remain effective until a full hearing is held.

(2) Within five days following the issuance of the court's temporary order, a full hearing shall be held at which the complainant must prove the allegation of abuse by a preponderance of the evidence, or such petition shall be dismissed. At such hearing, the court may make any protective order or approve any consent agreement authorized by this article.

(3) If a hearing is continued, the court may make or extend such temporary orders as it deems necessary. (1979, c. 34.)

§ 48-2A-6. Protective orders.

(1) The court may grant any protective order it deems necessary to bring about a cessation of abuse of the complainant or minor children, which may include:

(a) Directing the defendant to refrain from abusing the complainant or minor children;

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(b) Granting possession to the complainant of the residence or household to the exclusion of the defendant when the residence or household is jointly owned or leased by the parties;

(c) When the defendant has a duty to support the complainant or minor children living in the residence or household and the defendant is the sole owner or lessee, granting possession to the complainant of the residence or household to the exclusion of the defendant or by consent agreement allowing the defendant to provide suitable alternate housing;

(d) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children;

(e) Ordering the defendant to pay to the complainant a sum for temporary support and maintenance of the abused party. This order is of a temporary nature and, on the thirtieth day following issuance of the order, that portion of the order requiring the defendant to pay support, becomes void unless the beneficiary of that order has filed a petition for divorce with a prayer for temporary support and maintenance under section thirteen [§ 48-2-13], article two, chapter forty-eight of this Code or has initiated an action for separate maintenance under section twenty-eight [§ 48-2-28], article two, chapter forty-eight of this Code. When there is a subsequent ruling on a petition for support under section thirteen [§ 48-2-13], article two, chapter forty-eight of this Code, that portion of the order requiring the defendant to pay support shall become void.

(2) Any protective order shall be for a fixed period of time not to exceed thirty days. The court may amend its order at any time upon subsequent petition filed by either party.

(3) No order under this article shall in any manner affect title to any real property.

Certified copies of any order made under the provisions of this article shall be issued to the plaintiff, the defendant and any law-enforcement agency having jurisdiction to enforce the order or agreement, including the city police, the county sheriff's office or local office of the state police. (1979, c. 34.)

§ 48-2A-7. Contempt.

(1) Upon violation of any order issued pursuant to this article, the court shall upon the filing of appropriate pleadings by or on behalf of any aggrieved party, issue an order to show cause why the person violating any provisions of the court's order should not be held in contempt of court and set a time for a hearing thereon within five days of the filing of said motion.

(2) Notwithstanding any other provision of law to the contrary, any sentence for contempt hereunder may include imprisonment up to thirty days and a fine not to exceed one thousand dollars or both. (1979, c. 34.)

§ 48-2A-8. Testimony of husband and wife.

Husband and wife are competent witnesses in such proceedings and cannot refuse to testify on the grounds of the privileged nature of their communications. (1979, c. 34.)

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§ 48-2A-9. Record-keeping and reporting.

(a) Each law-enforcement agency shall maintain records on all incidents of family or household abuse reported to it, and shall monthly make and deliver to the department of public safety a report on a form prescribed by the department, listing all such incidents of family or household abuse. Such reports shall include:

- (1) The age and sex of the abused and abusing parties;
- (2) The relationship between the parties;
- (3) The type and extent of abuse;
- (4) The number and type of weapons involved;
- (5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency's action and the abused's request for assistance;
- (6) Whether the complaining party reported having filed complaints with regard to family or household abuse on any prior occasion and if so, the number of such prior complaints; and
- (7) The effective dates and terms of any order of protection issued prior to or following the incident to protect the abused party: Provided, that no information which will permit the identification of the parties involved in any incident of abuse shall be included in such report.

(b) The department of public safety shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section, and publish a statistical compilation in the department's annual uniform crime report, as provided for in section twenty-four [§ 15-2-24], article two, chapter fifteen of this Code.

(c) The statistical compilation shall include, but is not limited to, the following:

- (1) The number of family violence complaints received;
- (2) The number of complaints investigated;
- (3) The number of complaints received from alleged victims of each sex;
- (4) The average time lapse in responding to such complaints;
- (5) The number of complaints received from alleged victims who have filed such complaints on prior occasions;
- (6) The number of aggravated assaults and homicides resulting from such repeat incidents;
- (7) The type of police action taken in disposition of the cases; and
- (8) The number of alleged violations of orders of protection.

(d) As used in this section, the terms "abuse" and "family or household members" shall have the meanings given them in section two [§ 48-2A-2], article two-A, chapter forty-eight of this Code; and the term "law-enforcement agency" shall include the West Virginia department of welfare in those instances of child abuse reported to the department which are not otherwise reported to any other law-enforcement agency.

(e) Nothing in this section shall be construed to authorize the inclusion of information contained in a report of an incident of abuse in any local, state, interstate, national or international system of criminal identification pursuant

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to section twenty-four [§ 15-2-24], article two, chapter fifteen of this Code: Provided, that nothing in this section shall prohibit the department of public safety from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime. (1981, c. 78.)

§ 48-2A-10. Enforcement procedure for temporary and protective order.

(1) Upon issuance of a temporary order as provided in section five [§ 48-2A-5] of this article, and service thereof upon the defendant, or under relief granted in a protective order as provided in subsections (a) and (b) [subdivisions (a) and (b) of subsection (1)], section six [§ 48-2A-6(1)(a) and (1)(b)] of this article of which the defendant has notice, a copy of such order shall, no later than the close of the next business day, be delivered to a local office of the city police, the county sheriff, and the West Virginia department of public safety, where it shall be placed in a confidential file, with access provided only to the law-enforcement agency and the respondent named on said order: Provided, that upon the expiration of any order issued pursuant to section five or six [§§ 48-2A-5 or 48-2A-6] of this article, any such law-enforcement agency which has any such order on file, shall immediately expunge its confidential file of any reference thereto and destroy all copies of such order in its possession, custody or control. A sworn affidavit may be executed by the party awarded exclusive possession of the residence or household, pursuant to an order entered under subsection (b) [subdivision (b) of subsection (1)], section six [§ 48-2A-6(1)(b)] of this article, and delivered to such law-enforcement agency simultaneously with any such order, giving his consent for a law-enforcement officer to enter such residence or household, without a warrant, to enforce such protective order or temporary order.

Any person who observes a violation of such order or the violated party may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to immediately investigate the alleged violation.

Where a law-enforcement officer observes a violation of a valid order he may immediately arrest the subject of the order. In cases of violation of such orders occurring outside the presence of the investigating officer, the complainant may apply to a court in session for a warrant of arrest. If the court finds probable cause to believe that a valid order has been violated, the court shall issue such warrant for the arrest of the subject of the order wherever he may be found.

Where there is an arrest, the officer shall take the arrested person before a court or the magistrate assigned to be available at such time and upon a finding of probable cause to believe a violation of an order has taken place, the court or magistrate shall set a time and place for a hearing, to take place within five days, and serve forthwith upon the alleged violator an order to show cause why he or she should not be held in contempt for violation of the prior order, which unless waived by the defendant shall be by trial by a jury of six persons. The remedies provided by this section shall be limited to violations of a temporary order or protective order entered pursuant to [subdivision (a) or (b) of subsection (1)], section six [§ 48-2A-6(1)(a) or (1)(b)] of this article. (1981, c. 79.)

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ARTICLE 2C.

FAMILY PROTECTION SHELTER SUPPORT ACT.

Sec.	Sec.
48-2C-1. Purpose.	48-2C-6. Award provisions.
48-2C-2. Definitions.	48-2C-7. Annual reports of shelter and programs.
48-2C-3. Family protection subcommittee.	48-2C-8. Governor's committee annual reports.
48-2C-4. Duties of governor's committee.	48-2C-9. Referral to shelters.
48-2C-5. Funding application requirements.	

§ 48-2C-1. Purpose.

The legislature hereby declares its intent to assist local communities in maintaining shelters to provide services and to house and care for, on a temporary basis, victims of domestic violence or abuse and their children. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

§ 48-2C-2. Definitions.

As used in this article, unless the context clearly requires otherwise:

(a) "Family protection program" or "program" means a program offered by a locally controlled organization comprised of concerned individuals organized primarily for the purpose of providing shelter and services to victims of domestic violence or abuse and their children;

(b) "Family protection shelter" or "shelter" means a facility created for the purpose of receiving, on a temporary basis, persons who are victims of domestic violence or abuse and their children and for providing services to them, which services may include counseling services where appropriate;

(c) "Family protection subcommittee" or "subcommittee" means that subcommittee of the governor's committee on crime, delinquency and correction established pursuant to section three of this article; and

(d) "Governor's committee" means the governor's committee on crime, delinquency and correction established as a state planning agency by the provisions of section one [§ 15-9-1], article nine, chapter fifteen of this Code. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

§ 48-2C-3. Family protection subcommittee.

(a) A subcommittee of the governor's committee on crime, delinquency and correction shall be created and assigned primary responsibility for review and administration of programs for the funding of family protection shelters and programs. The subcommittee shall be comprised of five members of the governor's committee who represent consumers or the public-at-large. At least three of the members of the subcommittee shall be persons identified in their separate communities across the State for past and continuing involvement in local activities promoting local family protection shelters and programs.

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(b) The subcommittee shall elect a chairperson and a vice-chairperson. Special meetings may be held upon the call of the chairperson or of a majority of the subcommittee members. A majority of the members of the subcommittee constitutes a quorum for the transaction of business. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

§ 48-2C-4. Duties of governor's committee.

It is the duty of the governor's committee, upon recommendation of the family protection subcommittee:

(a) To receive and consider applications for the development and maintenance of shelters and to approve or reject the same within forty-five days after receipt of applications;

(b) To facilitate the formation and operation of the family protection subcommittee;

(c) To distribute funds to a shelter within forty-five days after approval of its proposal;

(d) To evaluate annually each shelter to determine its compliance with the goals and objectives set out in its original application for funding;

(e) To seek appropriate additional funding to supplement the state appropriations for shelters and programs; and

(f) To award to shelters for each fiscal year a total sum equal to no less than ninety-five percent of the total funds collected and paid over during that fiscal year to the special revenue account established pursuant to section twenty-four [§ 48-1-24], article one of this chapter and to expend during said period a sum not in excess of five percent of said funds for costs of administering the provisions of this article. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

§ 48-2C-5. Funding application requirements.

(a) A shelter or program may apply to the governor's committee for a grant of funds as provided by this article. The application shall include all of the following:

(1) Evidence that the organization submitting the application is incorporated in this State as a nonprofit corporation;

(2) A list of the incorporators of the corporation and a list of the officers and the board of directors;

(3) The proposed budget of the shelter or program for the following fiscal year;

(4) A summary of the services proposed to be offered in the following fiscal year by the shelter or program;

(5) An evaluation of local needs for a shelter or program; and

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(6) An estimate of the number of people to be served by the shelter or program during the following fiscal year.

(b) In order to qualify for a grant of funds under this article, each family protection shelter or program shall:

(1) Provide or propose to provide a facility which will serve as temporary shelter to receive, care and provide services for persons who are victims of domestic violence or abuse and their children;

(2) Be incorporated in this State as a nonprofit corporation;

(3) Have a board of directors which represents the racial, ethnic and socio-economic diversity of the community to be served, including at least one person who is or has been a victim of domestic violence or abuse;

(4) Receive at least sixty-five percent of its funds from sources other than funds distributed under this article. These sources may be public or private and may include contribution of goods or services; and

(5) Require persons employed by or volunteering services to the shelter or program to maintain the confidentiality of any information which may identify individuals served by it.

(c) A family protection shelter or program may not be funded initially if it is shown that it discriminates in its services on the basis of race, religion, age, sex, marital status, national origin or ancestry. If such discrimination occurs after initial funding, the shelter or program may not be refunded until the discrimination ceases.

(d) A family protection shelter program may not be refunded if its original application projected the provision of residential services and such services were not provided in the first six months following disbursement of the original funds under this article: Provided, that upon a subsequent showing that the funds were used in the manner proposed in the original application, the shelter or program is not barred from subsequent funding. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

§ 48-2C-6. Award provisions.

Grants made pursuant to this article shall be awarded on the basis of the following criteria:

(a) Demonstration of local need for proposed services;

(b) Merit of project as proposed;

(c) Demonstration of local control of the shelter or program;

(d) Administrative design and efficiency of the project; and

(e) No portion of the award granted shall be used for salaries, wages or personal services. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

§ 48-2C-7. Annual reports of shelter and programs.

A shelter or program receiving funds pursuant to this article shall file an

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annual report with the subcommittee by the thirty-first day of each October for the prior fiscal year. The report shall include statistics on the number of persons served, the relationship of the victim to the abuser, services provided to the abuser, the number of referrals made for medical, psychological, financial, educational, vocational, child care or legal services and shall include the results of an independent audit. No information contained in the report may identify any person served by the shelter or enable any person to determine the identity of any such person. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

§ 48-2C-8. Governor's committee annual reports.

By the first day of January of each year, the subcommittee shall submit to the governor and, upon request to members of the legislature, a report which shall contain, but not be limited to, the following information:

(a) A summary of the work and activities of the governor's committee and the subcommittee relating to administration of this article during the preceding fiscal year;

(b) The number of persons treated or assisted by shelters receiving funding through the governor's committee; and

(c) A listing of services or efforts organized to prevent the potential for domestic violence or abuse as identified by the subcommittee, the estimated annual costs of services to prevent the potential for domestic violence, identification of possible funding sources for such services and the projected benefits of providing such services. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

§ 48-2C-9. Referral to shelters.

Where shelters are available, any law-enforcement officer or any public authority investigating an alleged incident of domestic violence shall advise the person subject to abuse of the availability of the family protection shelter to which such person may be admitted. (1981, c. 74.)

Effective date. — Acts 1981, c. 74 takes effect July 1, 1981.

Category	Citation
1. Victim Compensation Program	949.001 et seq.
1.1 Responsible Agency	949.01(1m), 949.03(1)
1.2 Eligible Claimants	949.03(1), 949.04(1), 949.08(2),(3)
1.3 Losses Covered	949.06
1.4 Minimum and Maximum Award	949.06(2)
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	949.08(1)
1.7 Filing of Claim - Time Limit	949.08(1)
1.8 Emergency Award	949.10
1.9 Funding	
2. Restitution	
2.1 Sentencing Option	
2.2 Mandatory Condition of Probation	973.09(1)(b)
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	814.67
5. Victim's Bill of Rights	950.01 et seq.
6. Protection from Intimidation	
6.1 Crime Defined	940.20 (battery to witness), 940.41 et seq.
6.2 Protective Orders	940.47 et seq.; 950.04(3)
7. Victim Notification	
7.1 of Compensation Program	950.04(4)
7.2 of Witness Fees	950.04(5)
7.3 of Final Disposition	950.04(1)
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	950.04(2)
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	950.04(1)
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	950.04(2m), 950.05(1)(dm); 972.15(2m); 973.01(4); See, 973.09(1m)(b)
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	950.04(8)
9.2 Criminal Sanction for Penalizing Employee-Witness	103.87
10. Return of Seized Property	950.04(7)
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	950.04(4) (notice of services)
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	940.19(3)(a)
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	15.197 (council on domestic abuse); 971.37 (deferred prosecution program for domestic violence offenders)
14.1 Protective Orders	
14.2 Domestic Violence Shelters	46.95; 973.055 (domestic abuse assessments)
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	949.18(5) (compensation claims)
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	949.13
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	949.16 (victim compensation records)
15.4 Sexual Assault Counselor Privilege	

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Wisconsin Statutes Annotated (West)

CHAPTER 949

AWARDS FOR THE VICTIMS OF CRIMES

Sec.	
949.001	Legislative intent.
949.01	Definitions.
949.02	Administration.
949.03	Compensable acts.
949.035	Residents; victims of crime outside the state.
949.04	Application for award.
949.05	Award; to whom payable.
949.06	Computation of award.
949.07	Manner of payment.
949.08	Limitations on awards.
949.09	Effect of conviction.
949.10	Emergency awards.
949.11	Hearings.
949.115	Subpoenas.
949.12	Condition of claimant.
949.13	Agency cooperation.
949.14	Attorney's fees.
949.15	Recovery from offender.
949.16	Confidentiality of records.
949.17	Offenses.
949.18	Report by the department.

Cross References

Rights of victims and witnesses of crime, see § 950.01 et seq.
Tax exemption, awards.
Income taxes, see § 71.01.
Gift taxes, see § 72.76.

949.001 Legislative intent

The legislature finds and declares that the state has a moral responsibility to aid innocent victims of violent crime. In order to maintain and to strengthen our democratic system of law and social order, it is essential that the rights of the victim of a crime should be as fully protected as the rights of the criminal offender. Adequate protection and assistance of victims of crime will also encourage greater public cooperation in the successful apprehension and prosecution of criminal offenders. It is the intention of the legislature that the state should provide sufficient assistance to victims of crime and their families in order to ease their financial burden and to maintain their dignity as they go through a difficult and often traumatic period. It is also the intention of the legislature that the department should actively publicize the crime victim compensation program and promote its use.

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949.01 Definitions

In this chapter:

(1) "Crime" means an act committed in this state which would constitute a crime as defined in s. 939.12 if committed by a competent adult who has no legal defense for the act.

(1m) "Department" means the department of justice.

(2) "Dependent" means any spouse, parent, grandparent, step-parent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of spouse of a deceased victim who was wholly or partially dependent upon the victim's income at the time of the victim's death and includes any child of the victim born after the victim's death.

(3) "Law enforcement agency" has the meaning designated under s. 165.83(1)(b).

(4) "Medical treatment" includes medical, surgical, dental, optometric, chiropractic, podiatric and hospital care; medicines; medical, dental and surgical supplies; crutches; artificial members; appliances and training in the use of artificial members and appliances. "Medical treatment" includes any Christian Science treatment for cure or relief from the effects of injury.

(5) "Personal injury" means actual bodily harm and includes pregnancy and mental or nervous shock.

(6) "Victim" means a person, other than an on-duty peace officer or fireman, who is injured or killed by an incident specified in s. 949.03(1)(a), or by any act or omission of any other person which is within the description of any of the offenses listed in s. 949.03(1)(b).

949.02 Administration

This chapter shall be administered by the department. The department shall appoint a program director to assist in administering this chapter. The department shall promulgate rules for the implementation and operation of this chapter.

Historical Note

Source:

L.1975, c. 944, § 3, eff. June 9, 1976.
L.1979, c. 189, § 11, eff. July 1, 1980.

Administrative Code References

Crime victim compensation bureau rules of practice, see section Ind 81.01 et seq.

949.03 Compensable acts

(1) The department may order the payment of an award for personal injury or death which results from:

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(a) Preventing or attempting to prevent the commission of a crime; apprehending or attempting to apprehend a suspected criminal; aiding or attempting to aid a police officer to apprehend or arrest a suspected criminal; aiding or attempting to aid a victim of a crime specified in par. (b).

(b) The commission or the attempt to commit any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.09, 940.19, 940.20, 940.201, 940.21, 940.225(1) to (3), 940.23, 940.24, 940.28, 940.29, 940.30, 940.305, 940.31, 940.32, 943.02, 943.03, 943.04, 943.10, 943.20, 943.32 or 944.12.

Historical Note

Source: L.1975, c. 344, § 3, eff. June 9, 1976. L.1977, c. 239, § 4, eff. April 7, 1978. L.1977, c. 239, § 3, eff. June 1, 1978. L.1977, c. 173, § 166. L.1979, c. 118, § 2, eff. March 1, 1980.

949.035 Residents; victims of crime outside the state

(1) If a Wisconsin resident suffers injury or death in a situation described in s. 949.03 except that the act occurred in the United States outside this state, the resident has the same rights under this chapter as if the act had occurred in this state upon a showing that the state or territory in which the act occurred does not have a compensation of victims of crimes law which covers the injury or death suffered by the person.

(2) The department shall keep a current record of the laws relating to compensation of victims of crimes in other states and territories of the United States and, upon request, shall assist Wisconsin residents to determine if they meet the criteria specified in sub. (1).

(3) In this section, "resident" means a person who maintains a place of permanent abode in this state.

Historical Note

Source: L.1979, c. 34, § 1119r, eff. Jan. 1, 1979. "The creation of section 949.035 of the statutes by this act applies retrospectively to January 1, 1979."

L.1979, c. 34, § 2103(25)(a) provides:

949.04 Application for award

(1) **Eligibility.** Any person may apply for an award under this chapter.

(a) Application by a minor may be made on the minor's behalf by his or her parent or guardian.

(b) Application by an incompetent may be made on the incompetent's behalf by the guardian or other person authorized to administer the incompetent's estate.

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(2) **Forms.** The department shall prescribe application forms for awards under this chapter and shall furnish law enforcement agencies with the forms. The law enforcement agency investigating a crime shall provide forms to each person who may be eligible to file a claim under this subchapter.

(3) **Medical and dental records.** The applicant shall submit to the department reports from all physicians, osteopaths, dentists, optometrists, chiropractors or podiatrists who treated or examined the victim at the time of or subsequent to the victim's injury or death. The department may also order such other examinations and reports of the victim's previous medical and dental history, injury or death as it believes would be of material aid in its determination.

Historical Note

Source: L.1975, c. 344, § 3, eff. June 9, 1976. L.1975, c. 422, § 163, eff. June 30, 1976. L.1975, § 421, §§ 476 to 478, eff. June 29, 1976. L.1977, c. 239, § 5, eff. April 7, 1978. L.1981, c. 20, § 1821c, eff. July 31, 1981.

Administrative Code References

Rules of practice, see section Ind 81.01 et seq.

949.05 Award; to whom payable

(1) In any case in which a person, other than an on-duty peace officer or fireman, is injured or killed by an incident specified in s. 949.03(1)(a), or by any act or omission of any other person which is within the description of crimes under s. 949.03(1)(b) the department may order the payment of an award:

(a) To or for the benefit of the injured person;

(b) In the case of personal injury of the victim, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of such injury; or

(c) In the case of death of the victim, to or for the benefit of any one or more of the dependents of the victim. If 2 or more dependents are entitled to an award, the award shall be apportioned by the department among the dependents.

Historical Note

Source: L.1975, c. 344, § 3, eff. June 9, 1976.

949.06 Computation of award

(1) In accordance with this chapter, the department shall make awards, as appropriate, for any of the following economic losses incurred as a direct result of an injury:

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a. Medical treatment.

b. Work loss, which shall be determined as follows:

1. If the victim was employed at the time of the injury, loss of actual earnings shall be based upon the victim's net salary at the time of the injury.

2. If the victim was not employed at the time of the injury or, if as a direct result of the injury, the victim suffered a disability causing a loss of potential earnings, the award may be based upon a sufficient showing by the victim that he or she actually incurred loss of earnings. The amount of the award shall be reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing, but unreasonably failed to undertake.

3. If the sole employment of the victim at the time of the injury or death, and for the preceding 5 years was limited to performing duties and responsibilities of a homemaker, the award shall be sufficient to ensure that the duties and responsibilities are continued until the victim is able to resume the performance of the duties, or until the cost of services reaches the maximum allowable under sub. (2), whichever is less.

4. Weekly payments under this paragraph shall not exceed the limits prescribed in s. 102.11.

c. Reasonable replacement value of any clothing that is held for evidentiary purposes, but not to exceed \$100.

d. Reasonable funeral and burial expenses, not to exceed \$2,000. The funeral and burial award may not be considered by the department under sub. (2).

e. Dependent's economic loss, which shall include contributions of things of economic value provided by the victim to dependents but lost as a result of the victim's death. Loss of support shall be determined on the basis of the victim's net salary at the time of death, and shall be calculated as an amount equal to 4 times the victim's average annual earnings.

(2) The department may not make an award of more than \$10,000 for any one injury or death.

(3) Any award made under this section shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

(a) From, or on behalf of, the person who committed the crime.

(b) From insurance payments or program, including worker's compensation and unemployment compensation.

(c) From public funds.

(d) As an emergency award under s. 949.10.

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(4)(a) An award may be made whether or not any person is prosecuted or convicted of any offense arising out of such act or omission.

(b) The department may suspend proceedings under this chapter for a period it deems appropriate on the grounds that a prosecution for an offense arising out of the act or omission has been commenced or is imminent.

949.07 Manner of payment

The award, combining both the compensation award and the funeral and burial award, if applicable, shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. The department may pay any portion of an award directly to the provider of any service which is the basis for that portion of the award. No award may be 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 the creditor provided products, services or accommodations the costs of which are included in the award.

949.08 Limitations on awards

(1) No order for the payment of an award may be made unless the application was made within 2 years after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense which had been reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made.

(2) No award may be ordered if the victim:

(a) Engaged in conduct which substantially contributed to the infliction of the victim's injury or death or in which the victim could have reasonably foreseen could lead to the injury or death. This does not apply to awards to victims under s. 949.03(1)(a).

(b) Committed a crime which caused or contributed to the victim's injury or death.

(c) Is the spouse of, or a person living in the same household with, the offender, the offender's relatives or accomplice or is the parent, child, brother or sister of the offender or the offender's accomplice. This paragraph does not apply if the department determines in a particular case that the interest of justice so requires.

(d) Has not cooperated with appropriate law enforcement agencies.

(3) No award may be made to any claimant if the award would unjustly benefit the offender or accomplice.

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(4) Orders for payment of awards may be made only as to injuries or deaths resulting from incidents or offenses occurring after 1976.

Historical Note

Source: L.1979, c. 189, §§ 14, 15, eff. July 1, 1980.
L.1975, c. 344, § 3, eff. June 9, 1976.
L.1975, c. 421, § 483, eff. June 29, 1976.
L.1981, c. 20, § 1821m, eff. July 31, 1981.

949.09 Effect of conviction

If any person has been convicted of any offense with respect to an act or omission on which a claim under this chapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

Historical Note

Source: L.1975, c. 344, § 3, eff. June 9, 1976.

949.10 Emergency awards

(1) Notwithstanding s. 949.06, if the department determines that an award will probably be made and that undue hardship will result to the claimant if immediate payment is not made, the department may order emergency awards as follows:

- (a) An emergency compensation award may not exceed \$500.
- (b) An emergency award for funeral and burial expenses may not exceed \$2,000.

(2) Any award under sub. (1) shall be deducted from the final award made to the claimant. The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the department.

Historical Note

Source: L.1975, c. 344, § 3, eff. June 9, 1976.
L.1981, c. 20, § 1821s, eff. July 31, 1981.

949.11 Hearings

(1) The procedure of ch. 227 for contested cases applies to hearings under this chapter except as otherwise provided in this section and ss. 949.12 and 949.14.

(2) The attorney general shall authorize a hearing examiner to make findings and orders under s. 227.09 and this chapter.

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(3) All hearings shall be open to the public unless in a particular case the examiner determines that the hearing, or a portion thereof, shall be held in private having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

Historical Note

Source: L.1977, c. 239, § 8, eff. April 7, 1978.
L.1975, c. 344, § 3, eff. June 9, 1976.
L.1979, c. 189, § 16, eff. July 1, 1980.

949.115 Subpoenas

The department or any of its authorized agents may issue subpoenas for persons or records for any investigation or hearing conducted under this chapter and may enforce compliance with such subpoenas as provided in s. 885.12.

Historical Note

Source: L.1981, c. 20, § 1821t, eff. July 31, 1981.

949.12 Condition of claimant

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.

Historical Note

Source: L.1979, c. 189, § 17, eff. July 1, 1980.
L.1981, c. 20, §§ 1821u to 1821w, eff. July 31, 1981.
L.1981, c. 20, § 1821w repealed former subsecs. (2) to (4) relating to mental or physical examinations and reports thereof.
Former section. St.1975, § 949.12, relating to appeals and derived from L. 1975, c. 344, § 3, eff. June 9, 1976, was repealed by L.1977, c. 29, § 1590.

Cross References

Physician-patient privilege, see § 905.04.

949.13 Agency cooperation

Upon request by the department, any state or local agency, including a district attorney or law enforcement agency, shall make available all reports, files and other appropriate information which the department requests in order to make a determination that an applicant is eligible for an award under this chapter.

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949.14 Attorney's fees

(1) The department may determine and allow reasonable attorney fees to be paid out of, but not in addition to, the amount of the award granted to the applicant. No attorney may ask for, contract for or receive any larger sum than the amount so allowed. Attorney fees shall not exceed 10% of the amount the attorney assisted the victim in obtaining.

(2) The department shall provide for payment of such fee directly to the person entitled thereto.

(3) Whoever charges a fee in violation of sub. (1) shall forfeit double the amount retained by the attorney. This forfeiture shall be collected by this state in an action in debt, upon complaint of the department. Out of the sum recovered, the court shall direct payment to the applicant in the amount of the overcharge.

Historical Note

Source:

L.1975, c. 344, § 3, eff. June 9, 1976. L.1977, c. 239, § 9, eff. April 7, 1978.
L.1975, c. 421, § 484, eff. June 29, 1976. L.1979, c. 189, § 19, eff. July 1, 1980.

Administrative Code References

Limitation to 20% of compensation award, see section Ind 81.19.

949.15 Recovery from offender

(1) Whenever an order for the payment of an award for personal injury or death is or has been made under this chapter, the department is subrogated to the cause of action of the applicant against the person responsible for the injury or death and may bring an action against the person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the award order is recovered and collected in any such action, the department shall pay the balance to the applicant. If the person responsible for the injury or death has previously made restitution payments to the general fund under s. 973.09, any judgment obtained by the department under this section shall be reduced by the amount of the restitution payments to the general fund.

(2) In addition to the authority of the department to bring an action under sub. (1), the claimant may bring an action to recover damages. In any such action, the department has subrogation rights under sub. (1) and the claimant shall join the department as a party under s. 803.03(2)(a). After joinder, the department has the options specified in s. 803.03(2)(b).

(3) If a judgment or verdict in an action under sub. (1) or (2) indicates separately economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion

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to the amounts indicated. In such an action, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages and economic loss.

Historical Note

Source:

L.1975, c. 344, § 3, eff. June 9, 1976. L.1981, c. 20, § 1821xm, eff. July 31, 1981.
L.1979, c. 189, §§ 20, 21, eff. July 1, 1980.

Administrative Code References

Applicant's action against offender, see section Ind 81.21.

949.16 Confidentiality of records

The record of a proceeding before an examiner or the department under this chapter is a public record. Any record or report obtained by an examiner or the department, the confidentiality of which is protected by any other law or rule, shall remain confidential.

Historical Note

Source:

L.1975, c. 344, § 3, eff. June 9, 1976.
L.1977, c. 29, § 1592, eff. July 1, 1977.
L.1979, c. 189, § 22, eff. July 1, 1980.

949.17 Offenses

(1) **Prohibition.** In connection with the crime victim compensation program, no person may:

- (a) Submit a fraudulent application or claim for an award;
- (b) Intentionally make or cause to be made any false statement or representation of a material fact; or
- (c) Intentionally conceal or fail to disclose information affecting the amount of or the initial or continued right to any such award when reasonably requested to provide such information by the department.

(2) **Penalties.** Any person who violates this section shall be fined not more than \$500 or imprisoned not more than 6 months or both. The person shall further forfeit any benefit received and shall reimburse the state for payments received or paid to or on behalf of the person.

(3) **Damages.** The state has a civil cause of action for relief against any person who violates this section for the amount of damages which the state sustained by reason of the violation and, in addition, for punitive damages not more than double the amount of dam-

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ages which the state may have sustained, together with interest, and the cost of the suit.

(4) **Action.** The attorney general may bring any action and has such powers as may be necessary to enforce this section.

Historical Note

Source:

L.1975, c. 344, § 3, eff. June 9, 1976. L.1981, c. 20, § 1821y, eff. July 31, 1981.
L.1975, c. 421, § 485, eff. June 20, 1976.

949.18 Report by the department

The department shall annually prepare and transmit to the governor and legislature a report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case, and the amount of any award:

(1) An explanation of the procedures for filing and processing claims under this chapter.

(2) A description of the programs and policies instituted to promote public awareness about crime victim compensation.

(3) An analysis of future needs and suggested program improvements.

(4) A copy of the forms utilized under this chapter.

(5) A complete statistical analysis of the cases handled under this chapter, including:

(a) The number of claims filed.

(b) The number of claims approved and the amount of each award.

(c) The number of claims denied and the reasons for rejection.

(d) A breakdown of claims by geographic area, month, age and sex of victim, type of crime committed and other relevant facts.

(e) A summary of cases handled under this chapter.

Historical Note

Source:

L.1975, c. 344, § 3, eff. June 9, 1976.
L.1979, c. 189, §§ 23, 24, eff. July 1, 1980.

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973.09. Probation

(1)(a) Except as provided in par. * * * (c) or if probation is prohibited for a particular offense by statute if a person is convicted of a crime, the court, by order, may withhold sentence or impose sentence under s. 973.15, and stay its execution, and in either case place the person on probation to the department for a stated period, stating in the order the reasons therefor * * *. The court may impose any conditions which appear to be reasonable and appropriate. The period of probation may be made consecutive to a sentence on a different charge, whether imposed at the same time or previously.

(b) If the court places the person on probation, the court shall require restitution designed to compensate the victim's pecuniary loss resulting from the crime to the extent possible, unless the court finds there is substantial reason not to order restitution as a condition of probation. If the court does not require restitution to be paid to a victim, the court shall state its reason on the record. A court may require that restitution be paid to an insurer or surety which has paid any claims or benefits to or on behalf of the victim. If the court does require restitution, it shall specify the amount consistent with sub. (1m) and shall notify the department of justice of its decision if the victim may be eligible for compensation under ch. 949. If the court * * * places the person on probation, it shall require the probationer to pay a surcharge equal to * * * 5% of the total amount of any restitution, costs, attorney fees and any fines and related payments ordered under s. 973.05(1) to the clerk of circuit court or the department of health and social services, as applicable under sub. (1m), for administrative expenses under this section. * * *

(c) When a person is convicted of the crime specified in s. 940.01, the court shall not place the person on probation.

(1g) If the court places the person on probation, the court may require that the probationer reimburse the county or the state, as applicable, for any costs for legal representation to the county or the state for the defense of the case. In order to receive this reimbursement, the county or the state public defender shall provide a statement of its costs of legal representation to the defendant and court within the time period set for documenting the pecuniary loss of the victim under sub. (1m)(b). The time period does not apply to statements of costs for legal representation by private attorneys appointed under s. 977.08.

(1m)(a) In determining the amount and method of payment of restitution, the court shall consider the financial resources and future ability of the probationer to pay. The court may provide for payment of restitution to the victim up to but not in excess of the pecuniary loss caused by the offense. The probationer may assert any defense that he or she could raise in a civil action for the loss sought to be compensated by the restitution order. If the court also orders payment of fines, related payments under s. 973.05 and costs under s. 973.06, it shall set the amount of fines, related payments and costs in conjunction with the amount of restitution and issue a single order, signed by the judge, covering all payments required as a condition of probation. If the costs for legal representation by a private attorney appointed under s. 977.08 are not established at the time of issuance of the order, the court may revise the order to include those costs at a later time. The court shall consider the interest of the victim in receiving restitution when determining whether to order payment of costs.

(b) Upon the order of the court, the district attorney, the department of health and social services or an official of a law enforcement agency, as defined in s. 165.33(1)(b), shall document, within 30 days or a different period of time specified by the court, the nature and amount of the victim's pecuniary loss. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of the victim's pecuniary loss resulting from the offense or the amount of any payment ordered under par. (a). No hearing is required unless this application is made.

(c) The court shall not establish a payment schedule extending beyond the maximum term of probation that could have been imposed for the offense under sub. (2). Payments shall be applied first to satisfy the ordered restitution in full, then to pay any fines and related payments under s. 973.05, then to pay costs other than attorney fees and finally to reimburse county or state costs of legal representation.

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(d) Payment of restitution, costs, attorney fees, fines and related payments under s. 973.05 ordered under this section shall be to the department of health and social services, unless the county board authorizes that payments * * * in the county shall be to the clerk of circuit court. The clerk or the department shall establish a separate account for each * * * probationer for the collection and disbursement of funds. A portion of each payment shall be considered the surcharge for administrative expenses under sub. (1)(b).

(e) The clerk or the department shall notify the court if the probationer does not * * * make the * * * payments required by the court. If the clerk is acting under this subsection, he or she shall notify the department of any such noncompliance. * * *

(1r) If restitution is ordered for a merchant who has had merchandise stolen or has otherwise been wrongfully deprived of his or her merchandise, the merchant's pecuniary loss shall be the retail value of the merchandise.

(2) The original term of probation shall be:

(a) For misdemeanors, not less than 6 months, nor more than 2 years;

(b) For felonies, not less than one year nor more than either the statutory maximum term of imprisonment for the crime or 3 years, whichever is greater.

(3)(a) Prior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof.

(b) If restitution has been required, the clerk or the department, as applicable under sub. (1m), shall notify the sentencing court of the status of * * * the ordered payments at least 90 days before the probation expiration date. If the clerk is acting under sub. (1m), he or she shall give the department the same notification. If * * * payment as ordered has not been made, the court shall hold a probation review hearing prior to the expiration date, unless the hearing is voluntarily waived by the probationer with the knowledge that waiver may result in an extension of the probation period or in a revocation of probation. A probationer shall not be discharged from probation until the court determines that payment of the ordered restitution, costs, attorney fees, fines and related payments under s. 973.05 has been made or that there is substantial reason not to continue to require * * * payment * * *.

(4) The court may also require as a condition of probation that the probationer be confined in the county jail between the hours or periods of his employment during such portion of his term of probation as the court specifies, but not to exceed one year and the court shall require him to pay the * * * costs as provided in s. 56.09(4). While confined pursuant to this subsection he shall be subject to all the rules of the jail and the discipline of the sheriff.

(4m) If the defendant is placed on probation, the court shall determine if restitution would be an appropriate condition of probation. If restitution is ordered, the court shall inquire to see if an award has been made under ch. 949 and if the department of justice is subrogated to the cause of action under s. 949.15. If the restitution ordered is less than or equal to the award under ch. 949, the restitution shall be paid only to the general fund. If the restitution ordered is greater than the award under ch. 949, the general fund shall receive an amount equal to the award under ch. 949 and the balance shall be paid to the victim.

(5) When the probationer has satisfied the conditions of his probation, he shall be discharged and the department shall issue him a certificate of final discharge, a copy of which shall be filed with the clerk.

(6) If a crime victim is paid an award under ch. 949 for any loss arising out of a criminal act, the state is subrogated to the rights of the victim to any restitution required as a condition of probation by the court. The rights of the state are subordinate to the claims of victims who have suffered a loss arising out of the offenses or any transaction which is part of the same continuous scheme of criminal activity.

(7) Requiring restitution as a condition of probation does not limit or impair the right of a victim to sue and recover damages from the probationer in a civil action. The facts that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action. Any restitution paid by the probationer to the

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victim shall be set off against any judgment in favor of the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall hold a separate hearing to determine the validity and amount of any setoff asserted by the defendant.

(7m)(a) The court may require as a condition of probation that the probationer perform community service work for a public agency or a nonprofit charitable organization. The number of hours of work required may not exceed what would be reasonable considering the seriousness of the offense and any other offense which is read into the record at the time of conviction. An order may only apply if agreed to by the probationer and the organization or agency. The court shall ensure that the probationer is provided a written statement of the terms of the community service order and that the community service order is monitored.

(b) Any organization or agency acting in good faith to which a probationer is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the probationer.

(8) In this section, "pecuniary loss" means:

(a) All special damages, but not general damages, substantiated by evidence in the record, which a person could recover against the probationer in a civil action arising out of the facts or events constituting the probationer's criminal activities, including, without limitation because of enumeration, the money equivalent of loss resulting from property taken, destroyed, broken or otherwise harmed and out-of-pocket losses, such as medical expenses; and

(b) Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of the offense * * *.

814.67. Fees of witnesses and interpreters

(1) The fees of witnesses and interpreters shall be as follows:

(a) For attending before a municipal judge, an arbitrator, or any officer, board or committee:

1. For witnesses, \$5 per day.

2. For interpreters, \$10 per one-half day or such higher fees as the municipality or county board may establish.

(b) For attending before any other court

1. For witnesses, \$16 per day.

2. For interpreters, \$10 per one-half day or such higher fees as the county board may establish.

(c) For traveling, at the rate of 20 cents per mile going and returning from his or her residence if within the state; or, if without the state, from the point where he or she crosses the state boundary to the place of attendance, and returning by the usually traveled route between such points.

(2) A witness or interpreter is entitled to fees only for the time he or she is in actual and necessary attendance as such; and is not entitled to receive pay-in more than one action or proceeding for the same attendance or travel on behalf of the same party. A person is not entitled to fees as a witness or interpreter while attending court as an officer or juror. An attorney or counsel in any cause may not be allowed any fee as a witness or interpreter therein.

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CHAPTER 950

RIGHTS OF VICTIMS AND WITNESSES
OF CRIME

Sec.

- 950.01 Legislative intent.
- 950.02 Definitions.
- 950.03 Eligibility of victims.
- 950.04 Basic bill of rights for victims and witnesses.
- 950.05 Services for victims and witnesses.
- 950.06 Responsibility for rights and services.
- 950.07 Intergovernmental cooperation.

Cross References

Awards for crime victims, see § 949.001 et seq.

950.01 Legislative intent

In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.

Historical Note

Source: L.1979, c. 219, § 4, eff. Nov. 1, 1980. L.1981, c. 20, § 1847m amended L.1979, c. 219, § 6(3) to read:
Sunset provision. L.1979, c. 219, § 6(3) provides: "This act expires July 1, 1983, or on the general effective date of the 1983-85 biennial budget act, whichever occurs later, unless extended by action of the state legislature."

950.02 Definitions

In this chapter:

- (1) "Crime" means an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12.
- (2) "Department" means the department of justice.
- (3) "Family member" means spouse, child, sibling, parent or legal guardian.

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(4) "Victim" means a person against whom a crime has been committed.

(5) "Witness" means any person who has been or is expected to be summoned to testify for the prosecution, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

Historical Note

Source:

L.1979, c. 219, § 4, eff. Nov. 1, 1980.

Sunset provision. L.1979, c. 219, § 6(3) provides:

"This act expires July 1, 1983, unless extended by action of the state legislature."

L.1981, c. 20, § 1847m amended L.1979, c. 219, § 6(3) to read:

"This act expires July 1, 1983, or on the general effective date of the 1983-85 biennial budget act, whichever occurs later, unless extended by action of the state legislature."

950.03 Eligibility of victims

A victim has the rights and is eligible for the services under this chapter only if the victim reported the crime to law enforcement authorities within 5 days of its occurrence or discovery, unless he or she had a reasonable excuse not to do so.

Historical Note

Source:

L.1979, c. 219, § 4, eff. Nov. 1, 1980.

Sunset provision. L.1979, c. 219, § 6(3) provides:

"This act expires July 1, 1983, unless extended by action of the state legislature."

L.1981, c. 20, § 1847m amended L.1979, c. 219, § 6(3) to read:

"This act expires July 1, 1983, or on the general effective date of the 1983-85 biennial budget act, whichever occurs later, unless extended by action of the state legislature."

950.04 Basic bill of rights for victims and witnesses

Victims and witnesses of crimes have the following rights:

(1) To be informed by local law enforcement agencies and the district attorney of the final disposition of the case. If the crime charged is a felony or is specified in ch. 940, the victim shall be notified whenever the defendant or perpetrator is released from custody.

(2) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court.

SECTION 3. 950.04 (2m). of the statutes is created to read:

950.04 (2m) To have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim of a felony and have the information considered by the court.

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(3) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available.

(4) To be informed of financial assistance and other social services available as a result of being a witness or a victim of a crime, including information on how to apply for the assistance and services.

(5) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled.

(6) To be provided, whenever possible, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants.

(7) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.

(8) To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

(9) To be entitled to a speedy disposition of the case in which they are involved as a victim or witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

(10) To have the family members of all homicide victims afforded all of the rights under subs. (1) to (4) and (6) to (9) and analogous services under s. 950.05, whether or not they are witnesses in any criminal proceedings.

950.05 Services for victims and witnesses

(1) Counties are encouraged to provide victims and witnesses the following services:

(a) Court appearance notification services, including cancellation of appearances.

(b) Victim compensation and social services referrals, including witness fee collection, case-by-case referrals and public information.

(c) Escort and other transportation services related to the investigation or prosecution of the case, if necessary or advisable.

(d) Case progress notification services which may be combined with services under par. (a).

SECTION 4. 950.05 (1) (dm) of the statutes is created to read:
950.05 (1) (dm) Assistance in providing the court with information pertaining to the economic, physical and psychological effect of the crime upon the victim of a felony.

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(e) Employer intercession services.

(f) Expedited return of property services.

(g) Protection services.

(h) Family support services, including child and other dependent care services.

(i) Waiting facilities.

Historical Note

Source:

L.1979, c. 219, § 4, eff. Nov. 1, 1980.

Sunset provision. L.1979, c. 219, § 6(3) provides:

"This act expires July 1, 1983, unless extended by action of the state legislature."

L.1981, c. 20, § 1847, amended L.1979, c. 219, § 6(3) to read:

"This act expires July 1, 1983, or on the general effective date of the 1983-85 biennial budget act, whichever occurs later, unless extended by action of the state legislature."

Cross References

Employee not to be disciplined for testifying, see § 103.87.

950.06 Responsibility for rights and services

(1) In each county, the county board is responsible for the enforcement of rights under s. 950.04 and the provision of services under s. 950.05. A county board may decide to discontinue enforcing the rights under s. 950.04 and the provision of services under s. 950.05 and the only penalty shall be the loss of reimbursement under sub. (2).

(2) The costs of enforcing rights under s. 950.04 and providing services under s. 950.05 shall be paid for by the county, but the county is eligible to receive reimbursement from the state for the costs incurred in providing services under s. 950.05(1). For costs incurred on or after January 1, 1982, the county is eligible to receive funding from the state for not more than 90% of the costs incurred in providing services under s. 950.05(1). The department shall determine the level of services for which a county may be reimbursed. The county board shall file a claim for reimbursement with the department. The department shall reimburse the counties from the appropriation under s. 20.455(5) (c) on a semiannual basis for services provided on or after May 1, 1981.

(3) The county board shall provide for the implementation of the county's plan under sub. (4).

(4) If the county seeks reimbursement under sub. (2), the county board shall submit a program plan to the department for its approval not later than 6 months after November 1, 1980. The county is eligible for reimbursement under sub. (2) only if the department has approved the plan. The program plan shall describe the level of

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services to victims and witnesses that the county intends to provide; the personnel or agencies responsible for related administrative programs and individual services; proposed staffing for the program; proposed education, training and experience requirements for program staff and the staff of agencies providing related administrative programs and individual services; the county's budget for implementing the program and other information the department determines to be necessary for its review. The plan shall provide that the district attorney, local law enforcement agencies and the courts shall make available to the person or agency responsible for administering the program all reports or files, except reports or files which are required by statute to be kept confidential, if the reports or files are required by the person or agency to carry out program responsibilities. In August of each year, the county board shall submit a report to the department on the operation of the plan, including the enforcement of rights under s. 950.04 and the provision of services under s. 950.05.

(5) The department shall review and approve the implementation and operation of programs and the annual reports under this section. The department may suspend or terminate reimbursement under s. 20.455(5)(c) if the county fails to comply with its duties under this section. The department shall promulgate rules under ch. 227 for implementing and administering county programs approved under this section.

Historical Note

Source:

L.1979, c. 219, § 4, eff. Nov. 1, 1980.
L.1981, c. 20, §§ 1822g to 1822t, eff. July 31, 1981.

Sunset provision. L.1979, c. 219, § 6(3) provides:
"This act expires July 1, 1983; unless extended by action of the state legislature."

L.1981, c. 20, § 1847m amended L.1979, c. 219, § 6(3) to read:
"This act expires July 1, 1983, or on the general effective date of the 1983-85 biennial budget act, whichever occurs later, unless extended by action of the state legislature."

950.07 Intergovernmental cooperation

The county board, district attorney, local law enforcement agencies, local social service agencies and courts shall all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this chapter.

Historical Note

Source:

L.1979, c. 219, § 4, eff. Nov. 1, 1980.
L.1981, c. 20, § 1847m amended L.1979, c. 219, § 6(3) to read:

"This act expires July 1, 1983, or on the general effective date of the 1983-85 biennial budget act, whichever occurs later, unless extended by action of the state legislature."

* * *

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940.20. Battery; special circumstances

(3) **Battery to witnesses and jurors.** Whoever intentionally causes bodily harm to a person who he or she knows or has reason to know is or was a witness as defined in s. 940.41(3) * * * or a grand or petit juror, and by reason of the person having attended or testified as a witness or by reason of any verdict or indictment assented to by the person, without the consent of the person injured, is guilty of a Class D felony.

940.41. Definitions

In ss. 940.42 to 940.49:

(1) "Malice" or "maliciously" means an intent to vex, annoy or injure in any way another person or to thwart or interfere in any manner with the orderly administration of justice.

(2) "Victim" means any natural person against whom any crime as defined in s. 939.12 or under the laws of the United States is being or has been perpetrated or attempted in this state.

(3) "Witness" means any natural person who has been or is expected to be summoned to testify; who by reason of having relevant information is subject to call or likely to be called as a witness, whether or not any action or proceeding has as yet been commenced; whose declaration under oath is received as evidence for any purpose; who has reported any crime to any peace officer or prosecutor; or who has been served with a subpoena issued under s. 885.01 or under the authority of any court of this state or of the United States.

Source:

L.1981, c. 118, § 4, eff. March 3, 1982.

940.42. Intimidation of witnesses; misdemeanor

Except as provided in s. 940.43, whoever knowingly and maliciously prevents or dissuades, or who attempts to so prevent or dissuade any witness from attending or giving testimony at any trial, proceeding or inquiry authorized by law, is guilty of a Class A misdemeanor.

940.43. Intimidation of witnesses; felony

Whoever violates s. 940.42 under any of the following circumstances is guilty of a Class D felony:

(1) Where the act is accompanied by force or violence or attempted force or violence, upon the witness, or the spouse, child, parent, sibling or grandchild of the witness or any person sharing a common domicile with the witness.

(2) Where the act is accompanied by injury or damage to the real or personal property of any person covered under sub. (1).

(3) Where the act is accompanied by any express or implied threat of force, violence, injury or damage described in sub. (1) or (2).

(4) Where the act is in furtherance of any conspiracy.

(5) Where the act is committed by any person who has suffered any prior conviction for any violation under ss. 940.42 to 940.45, s. 943.30, 1979 stats.; or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation under ss. 940.42 to 940.45.

(6) Where the act is committed by any person for monetary gain or for any other consideration acting on the request of any other person. All parties to the transactions are guilty under this section.

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940.44. Intimidation of victims; misdemeanor

Except as provided in s. 940.45, whoever knowingly and maliciously prevents or dissuades, or who attempts to so prevent or dissuade, another person who has been the victim of any crime or who is acting on behalf of the victim from doing any of the following is guilty of a Class A misdemeanor:

- (1) Making any report of the victimization to any peace officer or state, local or federal law enforcement or prosecuting agency, or to any judge;
- (2) Causing a complaint, indictment or information to be sought and prosecuted and assisting in the prosecution thereof;
- (3) Arresting or causing or seeking the arrest of any person in connection with the victimization.

Source:

L.1981, c. 118, § 4, eff. March 3, 1982.

C.J.S. Obstructing Justice or Governmental Administration §§ 2 to 4, 9, 16, 17, 20, 21.

Library References

Obstructing Justice ⇒ 1.

940.45. Intimidation of victims; felony

Whoever violates s. 940.44 under any of the following circumstances is guilty of a Class D felony:

- (1) Where the act is accompanied by force or violence or attempted force or violence, upon the victim, or the spouse, child, parent, sibling or grandchild of the victim or any person sharing a common domicile with the victim.
- (2) Where the act is accompanied by injury or damage to the real or personal property of any person covered under sub. (1).
- (3) Where the act is accompanied by any express or implied threat of force, violence, injury or damage described in sub. (1) or (2).
- (4) Where the act is in furtherance of any conspiracy.
- (5) Where the act is committed by any person who has suffered any prior conviction for any violation under ss. 940.42 to 940.45, s. 943.30, 1979 stats., or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation under ss. 940.42 to 940.45.
- (6) Where the act is committed by any person for monetary gain or for any other consideration acting on the request of any other person. All parties to the transactions are guilty under this section.

Source:

L.1981, c. 118, § 4, eff. March 3, 1982.

940.46. Attempt prosecuted as completed act.

Whoever attempts the commission of any act prohibited under ss. 940.42 to 940.45 is guilty of the offense attempted without regard to the success or failure of the attempt. The fact that no person was injured physically or in fact intimidated is not a defense against any prosecution under ss. 940.42 to 940.45.

Source:

L.1981, c. 118, § 4, eff. March 3, 1982.

940.47. Court orders

Any court with jurisdiction over any criminal matter, upon substantial evidence, which may include hearsay or the declaration of the prosecutor, that knowing and malicious prevention or dissuasion of any person who is a victim or who is a witness has occurred or is reasonably likely to occur, may issue orders including but not limited to any of the following:

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- (1) An order that a defendant not violate ss. 940.42 to 940.45.

- (2) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, not violate ss. 940.42 to 940.45.

- (3) An order that any person described in sub. (1) or (2) maintain a prescribed geographic distance from any specified witness or victim.

- (4) An order that any person described in sub. (1) or (2) have no communication with any specified witness or any victim, except through an attorney under such reasonable restrictions as the court may impose.

Source:

L.1981, c. 118, § 4, eff. March 3, 1982.

940.48. Violation of court orders

Whoever violates an order issued under s. 940.47 may be punished as follows:

- (1) If applicable, the person may be prosecuted under ss. 940.42 to 940.45.

- (2) As a contempt of court under ch. 785. A finding of contempt is not a bar to prosecution under ss. 940.42 to 940.45, but:

- (a) Any person who commits a contempt of court is entitled to credit for any punishment imposed therefor against any sentence imposed on conviction under ss. 940.42 to 940.45; and

- (b) Any conviction or acquittal for any substantive offense under ss. 940.42 to 940.45 is a bar to subsequent punishment for contempt arising out of the same act.

- (3) By the revocation of any form of pretrial release or forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant to custody. After hearing and on substantial evidence, the revocation may be made whether the violation of order complained of has been committed by the defendant personally or was caused or encouraged to have been committed by the defendant.

Source:

L.1981, c. 118, § 4, eff. March 3, 1982.

940.49. Pretrial release

Any pretrial release of any defendant whether on bail or under any other form of recognizance shall be deemed to include a condition that the defendant neither do, nor cause to be done, nor permit to be done on his or her behalf, any act proscribed by ss. 940.42 to 940.45 and any wilful violation of the condition is subject to punishment as prescribed in s. 940.48(3) whether or not the defendant was the subject of an order under s. 940.47.

* * *

SECTION 5. 972.15 (2m) of the statutes is created to read:

972.15 (2m) The person preparing the presentence investigation report shall attempt to contact the victim to determine the economic, physical and psychological effect of the crime on the victim. The person preparing the report may ask any appropriate person for information. This subsection does not preclude the person who prepares the report from including any information for the court concerning the impact of a crime on the victim.

SECTION 6. 973.01 (4) of the statutes is created to read:

973.01 (4) If information under s. 972.15 (2m) has been provided in a presentence investigation report, the court shall consider that information when sentencing the defendant.

* * *

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103.87. Employee not to be disciplined for testifying

No employer may discharge an employee because the employee is subpoenaed to testify in an action or proceeding pertaining to a crime or pursuant to ch. 48. On or before the first business day after the receipt of a subpoena to testify, the employee shall give the employer notice if he or she will have to be absent from employment because he or she has been subpoenaed to testify in an action or proceeding pertaining to a crime or pursuant to ch. 48. If a person is subpoenaed to testify in an action or proceeding as a result of a crime, as defined in s. 950.02(1), against the person's employer or an incident involving the person during the course of his or her employment, the employer shall not decrease or withhold the employee's pay for any time lost resulting from compliance with the subpoena. An employer who violates this section may be fined not more than \$200 and may be required to make full restitution to the aggrieved employee, including reinstatement and back pay.

* * *

BODILY SECURITY

940.19 Battery; aggravated battery

(1) Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor.

(3) Whoever intentionally causes bodily harm to another by conduct which creates a high probability of great bodily harm is guilty of a Class E felony. A rebuttable presumption of conduct creating a high probability of great bodily harm arises:

(a) If the person harmed is 62 years of age or older; or

(b) If the person harmed has a physical disability, whether congenital or acquired by accident, injury or disease, which is discernible by an ordinary person viewing the physically disabled person.

* * *

(16) Council on domestic abuse. There is created in the department of health and social services a council on domestic abuse. The council shall consist of 9 members nominated by the governor and appointed, with the advice and consent of the senate, for staggered 3-year terms. Persons appointed shall have * * * a recognized interest in and knowledge of the problems and treatment of victims of domestic abuse. This subsection does not apply on or after July 1, 1985.

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46.95. Domestic abuse grants

(1) Definitions. In this section:

(a) "Domestic abuse" means physical abuse or threats of physical abuse between persons living in a spousal relationship or persons who formerly lived in a spousal relationship.

(b) "Organization" means a nonprofit corporation or a public agency which provides or proposes to provide any of the following domestic abuse services:

1. Shelter facilities or private home shelter care.
2. Advocacy and counseling for victims.
3. A 24-hour telephone service.
4. Community education.

(c) "Spousal relationship" means either a marital relationship or 2 persons of the opposite sex who share one place of abode with minor children and live together in a relationship which is similar to a marital relationship, except that the 2 persons are not married to each other.

(2) Distribution of funds. (a) The secretary shall make grants from the appropriations under s. * * * 20.435(2)(cb) and (hh) to organizations for the provision of any of the services specified in sub. (1)(b). Grants may be made to organizations which have provided domestic abuse services in the past or to organizations which propose to provide services in the future.

(b) In reviewing applications for grants, the department shall consider:

1. The need for domestic abuse services in the specific community in which the applicant provides services or proposes to provide services.
2. Coordination of the organization's services with other resources in the community and the state.

SECTION 997m. 46.95 (2) (b) 3 of the statutes is amended to read:

46.95 (2) (b) 3. The need for domestic abuse services in the areas of the state served by each ~~health planning agency as defined in s. 150.001 (12)~~ health systems agency designated under 42 USC 300L.

4. The needs of both urban and rural communities.
5. Maintenance of effort, by a city or county.

(c) No grant may be made to an organization which provides or will provide shelter facilities unless the department of industry, labor and human relations determines that the physical plant of the facility will not be dangerous to the health or safety of the residents when the facility is in operation. No grant may be given to an organization which provides or will provide shelter facilities or private home shelter care unless the organization ensures that the following services will be provided either by that organization or by another organization, person or agency:

1. A 24-hour telephone service.
2. Temporary housing and food.
3. Advocacy and counseling for victims.
4. Referral and follow-up services.
5. Arrangements for education of school-age children.
6. Emergency transportation to the shelter.

(d) No organization may receive more than 70% of its operating budget or \$100,000 annually, whichever is less, under this section. If the organization is not or will not be providing shelter facilities or private home shelter care, it shall not receive more than 70% of its operating budget or \$50,000 annually, whichever is less, under this section.

SECTION 998. 46.95 (2) (e) of the statutes is amended to read:

46.95 (2) (e) Of the funds distributed under this section for fiscal year ~~1981-82~~ 1983-84, not less than 75% shall be used to continue funding domestic abuse services that currently receive state funds under this section and not more than 25% shall be for other domestic abuse services. Of the funds distributed

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under this section for fiscal year 1982-83 1984-85, not less than 90% shall be used to continue funding domestic abuse services that received state funds under this section during the previous fiscal year and not more than 10% shall be for other domestic abuse services. For new domestic abuse services, the department shall give preference to services in areas of the state where these services are not otherwise available. Any funds that are not spent under one category of this formula may be reallocated by the department to the other category.

(3) **Report by department.** In addition to the biennial report of the secretary under s. 15.04(1)(d), the department shall annually prepare and transmit to the governor and legislature a report of activities under this section, including names and locations of organizations receiving grants, the amounts of grants, services provided by grantees and the number of persons served. The report may also include recommendations for changes in the formula specified in sub. (2)(e).

(4) **Advice from council.** The council on domestic abuse shall review applications for grants under this section and shall advise the secretary as to whether the application should be approved or denied. The council shall consider the criteria under sub. (2)(b) when reviewing the applications. This subsection does not apply on or after July 1, 1985.

971.37. Deferred prosecution programs; domestic abuse

(1) In this section, "child sexual abuse" means an alleged violation of s. 940.203, 940.225 or 944.06 if the alleged victim is a minor and the person accused of, or charged with, the violation:

- (a) Lives with or has lived with the minor;
- (b) Is nearer of kin to the alleged victim than a 2nd cousin;
- (c) Is a guardian or legal custodian of the minor; or
- (d) Is or appears to be in a position of power or control over the minor.

(1m)(a) The district attorney may enter into a deferred prosecution agreement under this section with a person accused of, or charged with, child sexual abuse or a violation of s. 940.19(1) or (1m) if the alleged victim lives with or has lived with the person in a spousal relationship, as defined in s. 46.95(1)(c).

(b) The agreement shall provide that the prosecution will be suspended for a specified period * * * if the person complies with conditions specified in the agreement. The agreement shall be in writing, signed by the district attorney or his or her designee and the person, and shall provide that the person waives his or her right to a speedy trial and that the agreement will toll any applicable civil or criminal statute of limitations during the period of the agreement, and, furthermore, that the person shall file with the district attorney a monthly written report certifying his or her compliance with the conditions specified in the agreement. The district attorney shall provide the spouse of the accused person and the alleged victim or the parent or guardian of the alleged victim with a copy of the agreement.

(2) The written agreement shall be terminated and the prosecution may resume upon written notice by either the person or the district attorney to the other prior to completion of the period of the agreement.

(3) Upon completion of the period of the agreement, if the agreement has not been terminated under sub. (2), the court shall dismiss, with prejudice, any charge or charges against the person in connection with the crime specified in sub. * * * (1m), or if no such charges have been filed, none may be filed.

(4) Consent to a deferred prosecution under this section is not an admission of guilt and the consent may not be admitted in evidence in a trial for the crime specified in sub. * * * (1m), except if relevant to questions concerning the statute of limitations or lack of speedy trial. No statement relating to the crime, made by the person in connection with any discussions concerning deferred prosecution or to any person involved in a program in which the person must participate as a condition of the agreement, is admissible in a trial for the crime specified in sub. * * * (1m).

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(5) This section does not preclude use of deferred prosecution agreements for * * * any alleged violations not subject to this section.

973.055. Domestic abuse assessments

(1) On or after May 1, 1980, if a court imposes a fine, the court shall determine whether the criminal conduct involved domestic abuse, as defined in s. 46.95(1) * * * (a). If the court makes the finding, it shall impose a domestic abuse assessment, in addition to the fine and penalty assessment, in an amount of 10% of the fine imposed. If multiple offenses are involved, the domestic abuse assessment shall be based on the total fine for all offenses which involved domestic abuse. If a fine is suspended, the domestic abuse assessment shall be reduced in proportion to the suspension.

(2) After the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.395(5). The county treasurer shall then make payment to the state treasurer as provided in s. 59.20(5)(b).

(3) All moneys collected from domestic abuse assessments shall be deposited by the state treasurer in * * * s. 20.435(2)(hh) and utilized in accordance with s. 46.95.

Category	Citation
1. Victim Compensation Program	
1.1 Responsible Agency	
1.2 Eligible Claimants	
1.3 Losses Covered	
1.4 Minimum and Maximum Award	
1.5 Required to Show Financial Need	
1.6 Required to Report Crime - Time Limit	
1.7 Filing of Claim - Time Limit	
1.8 Emergency Award	
1.9 Funding	
2. Restitution	7-13-307 et seq.
2.1 Sentencing Option	
2.2 Mandatory Condition of Probation	7-13-308 (mandatory consideration), 7-13-312
2.3 Mandatory Condition of Parole	
2.4 Mandatory Sentence	
2.5 Administration/Enforcement	7-13-312
3. Escrow and Forfeiture of Offender Profits	
4. Witness Fees	1-14-102, 1-14-106
5. Victim's Bill of Rights	
6. Protection from Intimidation	
6.1 Crime Defined	6-5-305
6.2 Protective Orders	
7. Victim Notification	
7.1 of Compensation Program	7-13-311 (of restitution plan)
7.2 of Witness Fees	
7.3 of Final Disposition	
7.4 of Plea Agreement	
7.5 of Cancelled Proceeding	
7.6 of Right to Participate in Sentencing Hearing	
7.7 of Parole Hearing	
7.8 of Release of Offender	
7.9 of Escape of Offender	
8. Victim Participation in Proceedings	
8.1 Victim Impact Statement in Presentence Report	
8.2 Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	
8.7 Participation in Other Proceedings	
9. Employment Assistance	
9.1 Employer Intercession Services	
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	7-7-105 et seq.
11. Victim-Witness Assistance	
11.1 Ombudsmen	
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	35-20-108
12.3 Abuse, Neglect, Exploitation - Reporting	35-20-103
12.4 Abuse, Neglect, Exploitation - Protective Services	35-20-101 et seq.
13. Sexual Assault Victims	
13.1 Payment for Medical Services	
13.2 Special Programs	
13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	35-21-101 et seq.
14.2 Domestic Violence Shelters	
14.3 Domestic Violence Reporting	
15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	35-20-107 (records of adult abuse)
15.4 Sexual Assault Counselor Privilege	

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Wyoming Statutes Annotated

§ 7-13-307. Definitions.

- (a) As used in this act:
- (i) "Criminal activity" means any crime for which there is a plea of guilty, nolo contendere or verdict of guilty upon which a judgment of conviction may be rendered and any other crime which is admitted by the defendant, whether or not prosecuted;
 - (ii) "Pecuniary damage" means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish and loss of consortium. "Pecuniary damage" includes damages for wrongful death;
 - (iii) "Restitution" means full or partial payment of pecuniary damages to a victim;
 - (iv) "Victim" means a person who has suffered pecuniary damages as a result of a defendant's criminal activities. However, with respect to any part of a victim's pecuniary damages paid by an insurer, the insurer shall be regarded as the victim only if the insurer has no right of subrogation and the insured has no duty to pay the proceeds of restitution to the insurer;
 - (v) "This act" means W.S. 7-13-307 through 7-13-315. (Laws 1980, ch. 34, § 1.)

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts. Am. Jur. 2d, ALR and C.J.S references. — Statutes providing for governmental compensation for victims of crime, 20 ALR4th 63.

§ 7-13-308. Plan of restitution as condition for suspended sentence or probation; present inability to make restitution; no pecuniary damages suffered.

If the sentencing court orders suspended imposition of sentence, suspended sentence or probation, the court shall consider as a condition that the defendant in cooperation with the probation and parole officer assigned to the defendant, promptly prepare a plan of restitution including the name and address of each victim, a specific amount of restitution to each victim and a schedule of restitution payments. If the defendant is presently unable to make any restitution but there is a reasonable possibility that the defendant may be able to do so at some time during his probation period, the plan of restitution shall also state the conditions under which or the event after which the defendant shall

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make restitution. If the defendant believes that no person suffered pecuniary damages as a result of the defendant's criminal activities, he shall so state. (Laws 1980, ch. 34, § 1; 1983, ch. 162, § 1.)

The 1983 amendment substituted "shall consider" for "may require" near the middle of the first sentence and "shall" for "will" near the end of the second sentence. Effective dates. — Section 2, ch. 162, Laws 1983, makes the act effective on May 27, 1983.

§ 7-13-309. Submission of restitution plan to court; approval or modification.

The defendant's plan of restitution and the comments of defendant's probation and parole officer shall be submitted promptly to the court. The court shall promptly enter an order approving the plan or modifying it and providing for restitution payments to the extent that the defendant is or may become reasonably able to make restitution, taking into account the factors enumerated in W.S. 7-13-310. The court may modify the plan at any time upon the defendant's request or upon the court's own motion. (Laws 1980, ch. 34, § 1.)

§ 7-13-310. Factors considered in formulating restitution plan.

(a) The probation and parole officer when assisting the defendant in preparing the plan of restitution, and the court before approving or modifying the plan of restitution, shall consider:

- (i) The defendant's:
 - (A) Physical and mental health and condition;
 - (B) Age;
 - (C) Education;
 - (D) Employment circumstances;
 - (E) Potential for employment and vocational training;
 - (F) Family circumstances; and
 - (G) Financial condition.
- (ii) The number of victims;
- (iii) The pecuniary damages of each victim;
- (iv) What plan of restitution will most effectively aid the rehabilitation of the defendant; and
- (v) Other appropriate factors. (Laws 1980, ch. 34, § 1.)

Editor's notes. — There is no subsection (b) in this section as it appears in the printed acts.

§ 7-13-311. Notice to victims of restitution plan.

(a) The probation and parole officer shall attempt to determine the name and address of each victim and the amount of his pecuniary damages.

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(b) The clerk of the court shall mail to each known victim a copy of the court's order approving or modifying the plan of restitution. (Laws 1980, ch. 34, § 1.)

§ 7-13-312. Compliance with restitution plan as condition of probation or suspension; payments to clerk.

Compliance with the plan of restitution as approved or modified by the court shall be a condition of the defendant's probation or suspension. Restitution payments shall be made to the office of the clerk unless otherwise ordered by the court. (Laws 1980, ch. 34, § 1.)

§ 7-13-313. Failure to comply as violation of conditions of probation; modification of plan.

Failure of the defendant to comply with W.S. 7-13-308 or to comply with the plan of restitution as approved or modified by the court is a violation of the conditions of probation. The court may modify the plan of restitution or extend the period of time for restitution, but not beyond the maximum probation period. (Laws 1980, ch. 34, § 1.)

§ 7-13-314. Civil remedies of victims unimpaired; restitution payments set off; evidence of restitution inadmissible.

(a) Proceedings under this act shall not limit or impair the rights of victims to sue and recover damages from the defendant in a civil action. However, any restitution payment by the defendant to a victim shall be set off against any judgment in favor of the victim in a civil action arising out of the same facts or event.

(b) The fact that restitution was required or made shall not be admissible as evidence in a civil action unless offered by the defendant. (Laws 1980, ch. 34, § 1.)

§ 7-13-315. Limitations on duty of prosecutor; victim's remedy by civil action.

The prosecuting attorney has no obligation to investigate alleged pecuniary damages or to petition the court for restitution on behalf of a victim. In the event that the victim is not satisfied with the restitution plan approved or modified by the court, the victim's sole and exclusive remedy is a civil action.

* * *

WYOMING

§ 1-14-102. Witness fees; fees for expert witnesses in civil and criminal cases.

(a) Witnesses are entitled to receive the following minimum fees:

(i) For attending before any court or grand jury, or before any judge, referee or commissioner, ten dollars (\$10.00) per day, and five dollars (\$5.00) for half a day;

(ii) For attending before a justice of the peace, three dollars (\$3.00) per day, and two dollars (\$2.00) for half a day; and

(iii) Mileage at the rate set in W.S. 9-16 [§ 9-1-118] for each mile actually and necessarily traveled in going to and returning from place of attendance.

(b) In any civil or criminal case, any party may call expert witnesses to testify and if the court finds any witness to be a qualified expert and the expert gives expert testimony which is admitted as evidence in the case, the expert witness shall be allowed witness fees of twenty-five dollars (\$25.00) per day or such other amount as the court allows according to the circumstances of the case. Expert witness fees may be charged as costs against any party or be apportioned among some or all parties in the discretion of the court. (Laws 1882, ch. 45, § 23; R.S.

§ 1-14-106. Payment of fees in criminal cases.

In criminal cases where the fees prescribed are not paid by the defendant or the prosecuting witness, they shall be paid to the party entitled thereto by the county. (Laws 1882, ch. 45, § 25; R.S. 1887, § 1210; R.S. 1899, § 4301; C.S. 1910, § 5162; C.S. 1920, § 6438; R.S. 1931, § 89-1604; C.S. 1945, § 3-3704; W.S. 1957, § 1-198; Laws 1977, ch. 188, § 1.)

Payment by county where prosecution instituted. — Witness fees are payable by the county in which a criminal prosecution is originally instituted, even though there be a change of venue to another county. *Stoll v. Board of Comm'rs*, 6 Wyo. 231, 44 P. 58 (1896).
ALR references. — Right of surety on bail bond to relief from forfeiture of bond in event

of subsequent surrender or production of principal as depending upon payment of costs, 84 ALR 455.

Costs as chargeable to defendant in criminal prosecution, 65 ALR2d 854.

Imposition of costs in trial court as affected by death of defendant pending appeal from criminal conviction, 83 ALR2d 864.

* * *

WYOMING

§ 6-5-305. Influencing, intimidating or impeding jurors, witnesses and officers; obstructing or impeding justice; penalties.

(a) A person commits a felony punishable by imprisonment for not more than ten (10) years, a fine of not more than five thousand dollars (\$5,000.00), or both, if, by force or threats, he attempts to influence, intimidate or impede a juror, witness or officer in the discharge of his duty.

(b) A person commits a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both, if, by threats or force, he obstructs or impedes the administration of justice in a court. (Laws 1982, ch. 75, § 3; 1983, ch. 171, § 1.)

* * *

§ 7-7-105. Property seized to be preserved as evidence.

When the warrant is executed by the seizure of the property or things described therein, the same shall be safely kept by the justice to be used as evidence. (C.L. 1876, ch. 14, § 17; R.S. 1887, § 3172; R.S. 1899, § 5446; C.S. 1910, § 6317; C.S. 1920, § 7613; R.S. 1931, § 33-1805; C.S. 1945, § 10-205; W.S. 1957, § 7-152.)

§ 7-7-106. Justice to control property.

If, upon examination, the justice shall be satisfied that the offense set forth in the complaint in reference to the property or other things seized by the officer, has been committed, it shall be his duty either to keep possession of such property or other things, or deliver them to the sheriff of the proper county, there to remain until the case against the offender has been disposed of, or the claimant's right has been otherwise ascertained. (C.L. 1876, ch. 14, § 18; R.S.

§ 7-7-107. Disposition of property.

Upon the conviction of the offender, the property stolen, embezzled or obtained under false pretenses, shall be returned to its owner, and the other things specified shall be burnt or otherwise destroyed, under the direction of the court; but if the alleged offender shall be discharged, either before the magistrate or the court before which he is recognized to appear, the property or other things shall be returned to the person in whose possession they were found. (C.L. 1876, ch. 14, § 19; R.S. 1887, § 3174; R.S. 1899, § 5448; C.S. 1910, § 6319; C.S. 1920, § 7615; R.S. 1931, § 33-1807; C.S. 1945, § 10-207; W.S. 1957, § 7-154.)

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WYOMING

CHAPTER 20

Adult Protective Services Act

Sec.		Sec.	
35-20-101. Title.			without consent; responsibility for costs.
35-20-102. Definitions.			
35-20-103. Reports of abuse, neglect or exploitation of disabled adult.		35-20-106. Petition by division when caretaker refuses to allow services; injunction.	
35-20-104. Division to coordinate services; rules and regulations.		35-20-107. Records confidential; exception.	
35-20-105. Protective services; no services		35-20-108. Abuse or neglect a misdemeanor.	

Am. Jur. 2d, ALR and C.J.S. references.
— 41 Am. Jur. 2d Incompetent Persons §§ 31 to 64.

§ 35-20-101. Title.

This act may be cited as the "Adult Protective Services Act". (Laws 1981, ch. 155, § 1.)

§ 35-20-102. Definitions.

- (a) As used in this act:
- (i) "Abuse" means assault or assault and battery or unreasonable confinement;
 - (ii) "Administrator" means the administrator of the division or his designee;
 - (iii) "Caretaker" means the person or facility responsible for the care or supervision of a disabled adult;
 - (iv) "Court" means the district court in the district where the adult resides or is found;
 - (v) "Disabled adult" means any person sixteen (16) years of age or older who is incapacitated due to a developmental disability, the infirmities of age or other similar incapacities due to an accident;
 - (vi) "Division" means the state department of health and social services, division of public assistance and social services;
 - (vii) "Exploitation" means unlawful utilization of a disabled adult or his resources for profit or advantage;

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(viii) "Neglect" means the caretaker's failure to provide adequate shelter, food, clothing or medical services for a disabled adult. Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not neglect for that reason alone;

(ix) "Protective services" means those services provided by the division to assist disabled adults to prevent or cause discontinuance of abuse, neglect or exploitation until the disabled adult no longer needs those services;

(x) "This act" means W.S. 35-20-101 through 35-20-108. (Laws 1981, ch. 155, § 1.)

Editor's notes. — There is no subsection (b) in this section as it appears in the printed act.

§ 35-20-103. Reports of abuse, neglect or exploitation of disabled adult.

(a) Any person who knows or has reasonable cause to believe that a disabled adult is abused, neglected, or exploited may report the facts to an officer of either the sheriff's department, the local police department or the division. Anyone who in good faith makes a report pursuant to this section is immune from civil liability for making the report.

(b) After receipt of a report that a disabled adult is abused, neglected or exploited, the law enforcement agency may request assistance from the administrator and from appropriate health or mental health agencies.

(c) If a law enforcement officer determines that an adult is abused, neglected or exploited, he shall notify the division of the potential need for protective services. (Laws 1981, ch. 155, § 1.)

§ 35-20-104. Division to coordinate services; rules and regulations.

(a) The division shall:

(i) Coordinate a protective services program consistent with this act [§§ 35-20-101 through 35-20-108], with the goal of ensuring that every person in need of protection will have easy access to protective services;

(ii) Adopt rules and regulations necessary to effect the provisions and purposes of this act;

(iii) Develop and maintain statistical data which set forth referrals by type of incidence and disposition pursuant to this act but which do not contain personally identifiable information. (Laws 1981, ch. 155, § 1.)

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§ 35-20-105. Protective services; no services without consent; responsibility for costs.

(a) The division may furnish protective services in response to requests for assistance from the person to be protected or his guardian or agent.

(b) Persons to be protected shall not receive protective services without consent.

(c) Costs incurred to furnish protective services shall be paid by the division unless:

(i) The disabled adult is eligible for such services from another governmental agency; or

(ii) A court appoints a guardian and orders that the costs be paid from the disabled adult's estate. (Laws 1981, ch. 155, § 1.)

§ 35-20-106. Petition by division when caretaker refuses to allow services; injunction.

(a) When a disabled adult needs protective services and the caretaker refuses to allow the provision of such services, the division may petition the court for an order enjoining the caretaker from interfering with the provision of protective services.

(b) The petition shall contain sufficient facts to show that the disabled adult needs protective services and that he consents to the services or lacks the capacity to consent to receive the services, and that the caretaker refuses to allow the provision of protective services.

(c) If the court finds the allegations to be true, it may enjoin the caretaker from interfering with the provision of protective services. (Laws 1981, ch. 155,

§ 35-20-107. Records confidential; exception.

Records of the division or other agency or the court pertaining to a person to receive protective services under this act [§§ 35-20-101 through 35-20-108] are not open to public inspection. Information contained in those records shall not be disclosed to the public in any manner that will identify individuals. The records may be made available for inspection only upon application to the court for good cause shown. (Laws 1981, ch. 155, § 1.)

§ 35-20-108. Abuse or neglect a misdemeanor.

A person who abuses or neglects a disabled adult is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000.00), or be confined in the county jail not more than one (1) year, or both. Upon a second or subsequent conviction the person shall be imprisoned in the state penitentiary for not more than five (5) years. (Laws 1981, ch. 155, § 1.)

WYOMING

CHAPTER 21

Family Violence Protection Act

Sec.	Sec.
35-21-101. Short title.	
35-21-102. Definitions.	remedies; order not to affect title to property.
35-21-103. Petition for order of protection; contents; divorce, etc., not a prerequisite; indigent petitioners; counsel to be provided petitioners.	35-21-106. Service of order; duration and extension of order; violation constitutes contempt; remedies not exclusive.
35-21-104. Temporary order of protection; setting hearing.	35-21-107. Emergency assistance by law enforcement officers; limited liability.
35-21-105. Order of protection; contents;	

Am. Jur. 2d, ALR and C.J.S. references.
— 41 Am. Jur. 2d Husband and Wife §§ 522 to 532.

Admissibility of expert or opinion testimony on battered wife or battered woman syndrome, 18 ALR 4th 1153.

§ 35-21-101. Short title.

This act [§§ 35-21-101 through 35-21-107] may be cited as the "Family Violence Protection Act". (Laws 1982, ch. 45, § 1.)

§ 35-21-102. Definitions.

(a) As used in this act:

- (i) "Adult" means a person who is sixteen (16) years of age or older, or legally married;
- (ii) "Court" means the county court or, if the county does not have a county court, the district court in the county where an alleged victim of domestic abuse resides or is found;
- (iii) "Domestic abuse" means physical abuse, threats of physical abuse or acts which unreasonably restrain the personal liberty of any household member by any other household member;
- (iv) "Household member" means spouses, persons living together as spouses, former spouses, parents, adult children and other adults sharing a common household;
- (v) "Order of protection" means a court order granted for the protection of victims of domestic abuse;
- (vi) "This act" means W.S. 35-21-101 through 35-21-107. (Laws 1982, ch. 45, § 1; 1983, ch. 56, § 1.)

The 1983 amendment inserted "county court or, if the county does not have a county court, the" and substituted "county" for "district" preceding "where" in subsection (a)(ii).
Editor's notes. — There is no subsection (b)

in this section as it appears in the printed acts.
Effective dates. — Section 2, ch. 56, Laws 1983, makes the act effective on May 27, 1983.

WYOMING

§ 35-21-103. Petition for order of protection; contents; divorce, etc., not a prerequisite; indigent petitioners; counsel to be provided petitioners.

(a) A victim of domestic abuse may petition the court under this act [§§ 35-21-101 through 35-21-107] by filing a petition with the county court clerk or the district court clerk if the county does not have a county court for an order of protection.

(b) The petition shall be made under oath or be accompanied by a sworn affidavit setting out specific facts showing the alleged domestic abuse.

(c) No petitioner is required to file for annulment, separation or divorce as a prerequisite to obtaining an order of protection.

(d) If the petition is accompanied by an affidavit to the effect that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as a poor person without payment of court costs. In determining the financial status of the petitioner under this subsection, the income of the alleged perpetrator of the domestic abuse shall not be considered.

(e) The clerk of the court shall make available standard petition forms with instructions for completion to be used by a petitioner. Forms are to be prepared by the division of community programs of the department of health and social services. Upon receipt of the initial petition by the clerk of the court, the clerk shall refer the matter to the court. The court may appoint an attorney to assist and advise the petitioner. The petitioner may hire an attorney or file pro se. (Laws 1982, ch. 45, § 1; 1983, ch. 56, § 1.)

The 1983 amendment inserted "by filing a petition with the county court clerk or the district court clerk if the county does not have a county court" in subsection (a) and, in subsection (e), added the last four sentences and, in

the first sentence, inserted "clerk of the" and substituted "a petitioner" for "petitioners not represented by counsel."
Effective dates. — Section 2, ch. 56, Laws 1983, makes the act effective on May 27, 1983.

§ 35-21-104. Temporary order of protection; setting hearing.

- (a) Upon the filing of a petition for order of protection, the court shall:
 - (i) Immediately grant an ex parte temporary order of protection if it clearly appears from the specific facts shown by the affidavit or by the petition that there exists a real danger of further domestic abuse;
 - (ii) Cause the temporary order of protection, together with notice of hearing, to be served on the alleged perpetrator of the domestic abuse immediately;
 - (iii) Within seventy-two (72) hours after the granting of the temporary order of protection, hold a hearing on the question of continuing the order; or
 - (iv) If an ex parte order is not granted, serve notice to appear upon the parties and hold a hearing on the petition for order of protection within seventy-two (72) hours after the filing of the petition. (Laws 1982, ch. 45, § 1.)

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35-21-105. Order of protection; contents; remedies; order not to affect title to property.

(a) Upon finding that an act of domestic abuse has occurred, the court shall enter an order of protection ordering the respondent household member to refrain from abusing the petitioner or any other household member. The order shall specifically describe the behavior [that] the court has ordered the respondent to do or refrain from doing. As a part of any order of protection, the court may:

(i) Grant sole possession of the residence or household to the petitioner during the period the order of protection is effective or order the respondent to provide temporary suitable alternative housing for petitioner and any children to whom the respondent owes a legal obligation of support;

(ii) Award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the petitioner;

(iii) Order that the respondent shall not initiate contact with the petitioner;

(iv) Prohibit the respondent from abducting, removing or concealing any child in the custody of the petitioner;

(v) Restrain the respondent from transferring, concealing, encumbering or otherwise disposing of petitioner's property or the joint property of the parties;

(vi) Order other injunctive relief as the court deems necessary for the protection of the petitioner;

(vii) If, after [a] hearing, it finds by a preponderance of evidence that an act of domestic abuse has occurred or that there exists a real danger of further domestic abuse, require the respondent to undergo appropriate professional counseling for a specified period of time not to exceed ninety (90) days.

(b) The order shall contain a notice that willful violation of any provision of the order constitutes contempt of court and may result in fine or punishment.

(c) No order issued under this act [§§ 35-21-101 through 35-21-107] shall affect title to any property nor allow the petitioner to transfer, conceal, encumber or otherwise dispose of respondent's property or the joint property of the parties. (Laws 1982, ch. 45, § 1.)

§ 35-21-106. Service of order; duration and extension of order; violation constitutes contempt; remedies not exclusive.

(a) An order of protection granted under this act [§§ 35-21-101 through 35-21-107] shall be filed with the clerk of court and a copy shall be sent by the clerk to the county sheriff. The order shall be personally served upon the respondent, unless he or his attorney was present at the time the order was issued.

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(b) An order of protection granted by the court shall be effective for a fixed period of time not to exceed three (3) months. The order may be extended for good cause upon motion of the petitioner for an additional period of time not to exceed three (3) months.

(c) Willful violation of an order of protection granted under this act is punishable as contempt of court.

(d) The remedies provided by this act are in addition to any other civil or criminal remedy available to the petitioner. (Laws 1982, ch. 45, § 1.)

§ 35-21-107. Emergency assistance by law enforcement officers; limited liability.

(a) A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.

(b) A local law enforcement officer responding to the request for assistance may take whatever steps are reasonably necessary to protect the victim from further domestic abuse, including:

(i) Advising the victim of the remedies available under this act [§§ 35-21-101 through 35-21-107] and the availability of shelter, medical care, counseling and other services;

(ii) Providing or arranging for transportation of the victim to a medical facility or place of shelter;

(iii) Accompanying the victim to the residence to remove the victim's personal clothing and effects required for immediate needs and the clothing and personal effects of any children then in the care of the victim;

(iv) Arresting the abusing household member when appropriate;

(v) Advising the victim, when appropriate, of the procedure for initiating proceedings under this act or criminal proceedings and the importance of preserving evidence.

(c) Any law enforcement officer responding to a request for assistance under this act is immune from civil liability when complying with the request, providing [that] the officer acts in good faith and in a reasonable manner.

Section 2
SELECTED FEDERAL LEGISLATION

Category		Citation
1. Victim Compensation Program		
1.1	Responsible Agency	
1.2	Eligible Claimants	
1.3	Losses Covered	
1.4	Minimum and Maximum Award	
1.5	Required to Show Financial Need	
1.6	Required to Report Crime - Time Limit	
1.7	Filing of Claim - Time Limit	
1.8	Emergency Award	
1.9	Funding	
2. Restitution		
2.1	Sentencing Option	P.L. 97-291 §5 (1982) (18 USC 3579 et seq.); Guidelines for Victim and Witness Assistance (Office of Attorney Gen., 7/9/83), Pt. IV
2.2	Mandatory Condition of Probation	
2.3	Mandatory Condition of Parole	
2.4	Mandatory Sentence	
2.5	Administration/Enforcement	
3.	Escrow and Forfeiture of Offender Profits	See, P.L. 97-291 §7
4.	Witness Fees	
5.	Victim's Bill of Rights	P.L. 97-291 §6(a) (18 USC 1512, note); Guidelines, Pt. II
6.	Protection from Intimidation	
6.1	Crime Defined	P.L. 97-291 §4 (18 USC 1512 et seq.); Guidelines, Pt. V
6.2	Protective Orders	P.L. 97-291 §4 (18 USC 1514)
7.	Victim Notification	
7.1	of Compensation Program	P.L. 97-291 §6(a)(1); Guidelines, Pt. II(A)(2)
7.2	of Witness Fees	
7.3	of Final Disposition	P.L. 97-291 §6(a)(5); Guidelines, Pt. II(B)(4)
7.4	of Plea Agreement	P.L. 97-291 §6(a)(5)(C); Guidelines, Pt. II(C)(5)
7.5	of Cancelled Proceeding	P.L. 97-291 §6(a)(3); Guidelines, Pt. II(B)(3)
7.6	of Right to Participate in Sentencing Hearing	Guidelines, Pt. II(3)(8)
7.7	of Parole Hearing	Guidelines, Pt. II(B)
7.8	of Release of Offender	P.L. 97-291 §6(a)(4)(C),(D); Guidelines, Pt. II(B)(4)
7.9	of Escape of Offender	Guidelines, Pt. II(B)
8.	Victim Participation in Proceedings	
8.1	Victim Impact Statement in Presentence Report	P.L. 97-291 §§3 (F.R. Crim. Proc. 32(c)(2)), 6(a)(5); Guidelines, Pt. III
8.2	Written Statement at Sentencing Hearing	

Category	Citation
8.3 Testimony at Sentencing Hearing	Guidelines, Pt. II(B)(8)
8.4 Written Statement at Parole Hearing	
8.5 Testimony at Parole Hearing	
8.6 Comment on Plea Bargain	P.L. 97-291 §6(a)(5)(C); Guidelines, Pt. II(C)(5)
8.7 Participation in Other Proceedings	P.L. 97-291 §6(a)(5)(D) (pretrial diversion program)
9. Employment Assistance	
9.1 Employer Intercession Services	P.L. 97-291 §6(a)(8); Guidelines, Pt. II(D)(4)(a)
9.2 Criminal Sanction for Penalizing Employee-Witness	
10. Return of Seized Property	P.L. 97-291 §6(a)(7); Guidelines, Pt. II(D)(3)
11. Victim-Witness Assistance	
11.1 Ombudsmen	P.L. 97-291 §6(a)(5); Guidelines, Pt. I(D)
11.2 Support Attendants	
11.3 Funding for Local Victim-Witness Groups	
12. Elderly Victims	
12.1 Sentencing for Offenses Against Elderly	
12.2 Abuse, Neglect, Exploitation - Criminal Penalty	
12.3 Abuse, Neglect, Exploitation - Reporting	
12.4 Abuse, Neglect, Exploitation - Protective Services	
13. Sexual Assault Victims	
13.1 Payment for Medical Services	Guidelines, Pt. II(D)(7)
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13.3 Child Sexual Assault Victim - Closed Proceedings	
13.4 Child Sexual Assault Victim - Admissible Depositions	
14. Domestic Violence	
14.1 Protective Orders	
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15. Privacy and Security of Victim Information	
15.1 Statistical Information on Victims Maintained	
15.2 Authority of Victim Compensation Agency to Request Data from Law Enforcement Agencies	
15.3 Confidentiality of Victim Information Held by Victim-Assistance Agencies	Guidelines, Pt. II(D)(1)
15.4 Sexual Assault Counselor Privilege	

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VICTIM AND WITNESS PROTECTION
ACT OF 1982

For Legislative History of Act, see p. 2515

An Act to provide additional protections and assistance to victims and witnesses in Federal cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Victim and Witness Protection Act of 1982".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that:

(1) Without the cooperation of victims and witnesses, the criminal justice system would cease to function; yet with few exceptions these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.

(2) All too often the victim of a serious crime is forced to suffer physical, psychological, or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system unresponsive to the real needs of such victim.

(3) Although the majority of serious crimes falls under the jurisdiction of State and local law enforcement agencies, the Federal Government, and in particular the Attorney General, has an important leadership role to assume in ensuring that victims of crime, whether at the Federal, State, or local level, are given proper treatment by agencies administering the criminal justice system.

(4) Under current law, law enforcement agencies must have cooperation from a victim of crime and yet neither the agencies nor the legal system can offer adequate protection or assistance when the victim, as a result of such cooperation, is threatened or intimidated.

(5) While the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted, or a court date is changed.

(6) The victim and witness who cooperate with the prosecutor often find that the transportation, parking facilities, and child care services at the court are unsatisfactory and they must often share the pretrial waiting room with the defendant or his family and friends.

(7) The victim may lose valuable property to a criminal only to lose it again for long periods of time to Federal law enforcement officials, until the trial and sometimes and appeals are over; many times that property is damaged or lost, which is particularly stressful for the elderly or poor.

(b) The Congress declares that the purposes of this Act are—

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- (1) to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process;
- (2) to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant; and
- (3) to provide a model for legislation for State and local governments.

VICTIM IMPACT STATEMENT

SEC. 3. Paragraph (2) of rule 32(c) of the Federal Rules of Criminal Procedure is amended to read as follows:

- "(2) REPORT.—The presentence report shall contain—
 - "(A) any prior criminal record of the defendant;
 - "(B) a statement of the circumstances of the commission of the offense and circumstances affecting the defendant's behavior;
 - "(C) information concerning any harm, including financial, social, psychological, and physical harm, done to or loss suffered by any victim of the offense; and
 - "(D) any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense."

PROTECTION OF VICTIMS AND WITNESSES FROM INTIMIDATION

SEC. 4. (a) Chapter 73 of title 18 of the United States Code is amended by adding at the end the following new sections:

"§1512. Tampering with a witness, victim, or an informant

"(a) Whoever knowingly uses intimidation or physical force, or threatens another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

"(1) influence the testimony of any person in an official proceeding;

"(2) cause or induce any person to—

"(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

"(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

"(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

"(D) be absent from an official proceeding to which such person has been summoned by legal process; or

"(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be fined not more than \$250,000 or imprisoned not more than ten years, or both.

"(b) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

"(1) attending or testifying in an official proceeding;

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"(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

"(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

"(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined not more than \$25,000 or imprisoned not more than one year, or both.

"(c) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

"(d) For the purposes of this section—

"(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

"(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

"(e) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

"(1) that the official proceeding before a judge, court, magistrate, grand jury, or government agency is before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a Federal grand jury, or a Federal Government agency; or

"(2) that the judge is a judge of the United States or that the law enforcement officer is an officer or employee of the Federal Government or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant.

"(f) There is extraterritorial Federal jurisdiction over an offense under this section.

"§1513. Retaliating against a witness, victim, or an informant

"(a) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for—

"(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer;

or attempts to do so, shall be fined not more than \$250,000 or imprisoned not more than ten years, or both.

"(b) There is extraterritorial Federal jurisdiction over an offense under this section.

"§1514. Civil action to restrain harassment of a victim or witness

"(a)(1) A United States district court, upon application of the attorney for the Government, shall issue a temporary restraining

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order prohibiting harassment of a victim or witness in a Federal criminal case if the court finds, from specific facts shown by affidavit or by verified complaint, that there are reasonable grounds to believe that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

"(2)(A) A temporary restraining order may be issued under this section without written or oral notice to the adverse party or such party's attorney in a civil action under this section if the court finds, upon written certification of facts by the attorney for the Government, that such notice should not be required and that there is a reasonable probability that the Government will prevail on the merits.

"(B) A temporary restraining order issued without notice under this section shall be endorsed with the date and hour of issuance and be filed forthwith in the office of the clerk of the court issuing the order.

"(C) A temporary restraining order issued under this section shall expire at such time, not to exceed 10 days from issuance, as the court directs; the court, for good cause shown before expiration of such order, may extend the expiration date of the order for up to 10 days or for such longer period agreed to by the adverse party.

"(D) When a temporary restraining order is issued without notice, the motion for a protective order shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character, and when such motion comes on for hearing, if the attorney for the Government does not proceed with the application for a protective order, the court shall dissolve the temporary restraining order.

"(E) If on two days notice to the attorney for the Government or on such shorter notice as the court may prescribe, the adverse party appears and moves to dissolve or modify the temporary restraining order, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

"(F) A temporary restraining order shall set forth the reasons for the issuance of such order, be specific in terms, and describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

"(b)(1) A United States district court, upon motion of the attorney for the Government, shall issue a protective order prohibiting harassment of a victim or witness in a Federal criminal case if the court, after a hearing, finds by a preponderance of the evidence that harassment of an identified victim or witness in a Federal criminal case exists or that such order is necessary to prevent and restrain an offense under section 1512 of this title, other than an offense consisting of misleading conduct, or under section 1513 of this title.

"(2) At the hearing referred to in paragraph (1) of this subsection, any adverse party named in the complaint shall have the right to present evidence and cross-examine witnesses.

"(3) A protective order shall set forth the reasons for the issuance of such order, be specific in terms, describe in reasonable detail (and not by reference to the complaint or other document) the act or acts being restrained.

"(4) The court shall set the duration of effect of the protective order for such period as the court determines necessary to prevent

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harassment of the victim or witness but in no case for a period in excess of three years from the date of such order's issuance. The attorney for the Government may, at any time within ninety days before the expiration of such order, apply for a new protective order under this section.

"(c) As used in this section—

"(1) the term 'harassment' means a course of conduct directed at a specific person that—

"(A) causes substantial emotional distress in such person; and

"(B) serves no legitimate purpose; and

"(2) the term 'course of conduct' means a series of acts over a period of time, however short, indicating a continuity of purpose.

"8 1515. Definitions for certain provisions

"As used in sections 1512 and 1513 of this title and in this section—

"(1) the term 'official proceeding' means—

"(A) a proceeding before a judge or court of the United States, a United States magistrate, a bankruptcy judge, or a Federal grand jury;

"(B) a proceeding before the Congress; or

"(C) a proceeding before a Federal Government agency which is authorized by law;

"(2) the term 'physical force' means physical action against another, and includes confinement;

"(3) the term 'misleading conduct' means—

"(A) knowingly making a false statement;

"(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;

"(C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

"(D) with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect; or

"(E) knowingly using a trick, scheme, or device with intent to mislead;

"(4) the term 'law enforcement officer' means an officer or employee of the Federal Government, or a person authorized to act for or on behalf of the Federal Government or serving the Federal Government as an adviser or consultant—

"(A) authorized under law to engage in or supervise the prevention, detection, investigation, or prosecution of an offense; or

"(B) serving as a probation or pretrial services officer under this title; and

"(5) the term 'bodily injury' means—

"(A) a cut, abrasion, bruise, burn, or disfigurement;

"(B) physical pain;

"(C) illness;

"(D) impairment of the function of a bodily member, organ, or mental faculty; or

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- "(E) any other injury to the body, no matter how temporary."
- (b) The table of sections at the beginning of chapter 73 of title 18 of the United States Code is amended—
- (1) so that the item relating to section 1503 reads as follows:
- "1503. Influencing or injuring officer or juror generally."; and
- (2) by adding at the end the following:
- "1512. Tampering with a witness, victim, or an informant.
 "1513. Retaliating against a witness, victim, or an informant.
 "1514. Civil action to restrain harassment of a victim or witness.
 "1515. Definitions for certain provisions."
- (c) Section 1503 of title 18 of the United States Code is amended—
- (1) in the heading of such section, by striking out ", juror or witness" and inserting in lieu thereof "or juror";
- (2) by striking out "witness" the first place it appears after "impede any" and all that follows through "or any grand" and inserting "grand" in lieu thereof; and
- (3) by striking out "injures any party or witness" and all that follows through "matter pending therein, or".
- (d) section 1505 of title 18 of the United States Code is amended by—
- (1) striking out paragraphs (1) and (2);
- (2) striking out "such" the first place it appears in the fourth paragraph and inserting in lieu thereof "any pending";
- (3) striking out "such" the second place it appears in the fourth paragraph and inserting in lieu thereof "any"; and
- (4) striking out "such inquiry" in the fourth paragraph and inserting in lieu thereof "any inquiry".
- (e) Section 1510(a) of title 18 of the United States Code is amended—
- (1) by striking out the comma immediately following "bribery" and all that follows through "thereof";
- (2) by striking out the semicolon immediately following "investigator" the first place it appears and all that follows through "Shall be fined" and inserting "shall be fined" in lieu thereof.

RESTITUTION

Sec. 5. (a) Chapter 227 of title 18 of the United States Code is amended by adding at the end the following:

"§ 3579. Order of restitution

"(a)(1) The court, when sentencing a defendant convicted of an offense under this title or under subsection (h), (i), (j), or (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense.

"(2) If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.

"(b) The order may require that such defendant—

"(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

"(A) return the property to the owner of the property or someone designated by the owner; or

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"(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

"(i) the value of the property on the date of the damage, loss, or destruction, or

"(ii) the value of the property on the date of sentencing,

less the value (as of the date the property is returned) of any part of the property that is returned;

"(2) in the case of an offense resulting in bodily injury to a victim—

"(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including non-medical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

"(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

"(C) reimburse the victim for income lost by such victim as a result of such offense;

"(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and

"(4) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.

"(c) If the Court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

"(d) The court shall impose an order of restitution to the extent that such order is as fair as possible to the victim and the imposition of such order will not unduly complicate or prolong the sentencing process.

"(e)(1) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for such loss to the extent that such person paid the compensation. An order of restitution shall require that all restitution to victims under such order be made before any restitution to any other person under such order is made.

"(2) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of that State.

"(f)(1) The court may require that such defendant make restitution under this section within a specified period or in specified installments.

"(2) The end of such period or the last such installment shall not be later than—

"(A) the end of the period of probation, if probation is ordered;

"(B) five years after the end of the term of imprisonment imposed, if the court does not order probation; and

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"(C) five years after the date of sentencing in any other case.
 "(3) If not otherwise provided by the court under this subsection, restitution shall be made immediately.

"(g) If such defendant is placed on probation or paroled under this title, any restitution ordered under this section shall be a condition of such probation or parole. The court may revoke probation and the Parole Commission may revoke parole if the defendant fails to comply with such order. In determining whether to revoke probation or parole, the court or Parole Commission shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

"(h) An order of restitution may be enforced by the United States or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

"§ 3580. Procedure for issuing order of restitution

"(a) The court, in determining whether to order restitution under section 3579 of this title and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

"(b) The court may order the probation service of the court to obtain information pertaining to the factors set forth in subsection (a) of this section. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.

"(c) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

"(d) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

"(e) A conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim."

(b) The table of sections at the beginning of chapter 227 of title 18 of the United States Code is amended by adding at the end the following new items:

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FEDERAL GUIDELINES FOR FAIR TREATMENT OF CRIME VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM

SEC. 6. (a) Within two hundred and seventy days after the date of enactment of this Act, the Attorney General shall develop and implement guidelines for the Department of Justice consistent with the purposes of this Act. In preparing the guidelines the Attorney General shall consider the following objectives:

(1) SERVICES TO VICTIMS OF CRIME.—Law enforcement personnel should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following—

(A) availability of crime victim compensation (where applicable);

(B) community-based victim treatment programs;

(C) the role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

(D) stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

(2) NOTIFICATION OF AVAILABILITY OF PROTECTION.—A victim or witness should routinely receive information on steps that law enforcement officers and attorneys for the Government can take to protect victims and witnesses from intimidation.

(3) SCHEDULING CHANGES.—All victims and witnesses who have been scheduled to attend criminal justice proceedings should either be notified as soon as possible of any scheduling changes which will affect their appearances or have available a system for alerting witnesses promptly by telephone or otherwise.

(4) PROMPT NOTIFICATION TO VICTIMS OF MAJOR SERIOUS CRIMES.—Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of judicial proceedings relating to their case, including—

(A) the arrest of an accused;

(B) the initial appearance of an accused before a judicial officer;

(C) the release of the accused pending judicial proceedings; and

(D) proceedings in the prosecution of the accused (including entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, the release of the accused from such imprisonment).

(5) CONSULTATION WITH VICTIM.—The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, should be consulted by the attorney for the Government in order to obtain the views of the victim or family about the disposition of any Federal criminal case brought as a result of such crime, including the views of the victim or family about—

(A) dismissal;

(B) release of the accused pending judicial proceedings;

(C) plea negotiations; and

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(D) pretrial diversion program.

(6) SEPARATE WAITING AREA.—Victims and other prosecution witnesses should be provided prior to court appearance a waiting area that is separate from all other witnesses.

(7) PROPERTY RETURN.—Law enforcement agencies and prosecutor should promptly return victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it.

(8) NOTIFICATION TO EMPLOYER.—A victim or witness who so requests should be assisted by law enforcement agencies and attorneys for the Government in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or attorneys for the Government, is subjected to serious financial strain, should be assisted by such agencies and attorneys in explaining to creditors the reason for such serious financial strain.

(9) TRAINING BY FEDERAL LAW ENFORCEMENT TRAINING FACILITIES.—Victim assistance education and training should be offered to persons taking courses at Federal law enforcement training facilities and attorneys for the Government so that victims may be promptly, properly, and completely assisted.

(10) GENERAL VICTIM ASSISTANCE.—The guidelines should also ensure that any other important assistance to victims and witnesses, such as the adoption of transportation, parking, and translator services for victims in court be provided.

(b) Nothing in this title shall be construed as creating a cause of action against the United States.

(c) The Attorney General shall assure that all Federal law enforcement agencies outside of the Department of Justice adopt guidelines consistent with subsection (a) of this section.

PROFIT BY A CRIMINAL FROM SALE OF HIS STORY

SEC. 7. Within one year after the date of enactment of this Act, the Attorney General shall report to Congress regarding any laws that are necessary to ensure that no Federal felon derives any profit from the sale of the recollections, thoughts, and feelings of such felon with regards to the offense committed by the felon until any victim of the offense receives restitution.

BAIL

SEC. 8. Section 3146(a) of chapter 207 of title 18, United States Code, is amended in the matter preceding paragraph (1)—

(1) by inserting after "judicial officer," the second place it appears the following: "subject to the condition that such person not commit an offense under section 1503, 1512, or 1513 of this title,"; and

(2) by inserting after "impose" the following: "a condition of release that such person not commit an offense under section 1503, 1512, or 1513 of this title and impose".

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SEC. 9. (a) Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b)(1) The amendment made by section 2 of this Act shall apply to presentence reports ordered to be made on or after March 1, 1983.

(2) The amendments made by section 5 of this Act shall apply with respect to offenses occurring on or after January 1, 1983.

GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE

I. GENERAL CONSIDERATIONS

A. Background

The Victim and Witness Protection Act of 1982 (VWPA), Public Law 97-291, was enacted "to enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the federal government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of defendants; and to provide a model for legislation for state and local governments." Section 6 of the VWPA requires the Attorney General to develop and implement guidelines for the Department of Justice consistent with the purposes of the Act.

These guidelines set forth procedures to be followed in responding to the needs of crime victims and witnesses. They are intended to ensure that responsible officials, in the exercise of their discretion, treat victims and witnesses fairly and with understanding. The guidelines are also intended to enhance the assistance which victims and witnesses provide in criminal cases and to assist victims in recovering from their injuries and losses to the fullest extent possible consistent with available resources.

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Finally, in addition to implementing Section 6 of the VWPA, these guidelines also reflect the view of the Department of Justice that the needs and interests of victims and witnesses have not received appropriate consideration in the federal criminal justice system. Thus, these guidelines incorporate victim and witness assistance concepts beyond those set out in the VWPA, in particular, pertinent recommendations of the President's Task Force on Victims of Crime.

B. Application

These guidelines apply to those components of the Department of Justice engaged in the detection, investigation or prosecution of crimes. They are intended to apply in all cases in which individual victims are adversely affected by criminal conduct or in which witnesses provide information regarding criminal activity. Of course, these guidelines do not apply to individuals involved or reasonably believed to have been involved in the criminal offense. Under these guidelines, special attention should be paid to victims and witnesses who have suffered physical, financial or emotional trauma as a result of violent criminal activity. The amount and degree of assistance provided will, of course, vary according to the individual's needs and circumstances.

C. Definitions

1. A "victim" is generally defined as someone who suffers direct or threatened physical, emotional or financial harm as the result of the commission of a crime. The term "victim" also includes the immediate family of a minor or a homicide victim.

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Federal departments and agencies shall not be considered a "victim" for purposes of Part II of these guidelines.

It should be noted that, because of the nature of federal criminal cases, it will often be difficult to identify the victim or victims of the offense. In many cases, there will be multiple victims. The provision of assistance in such circumstances must be determined on a case-by-case basis.* In some cases, extension of the full range of victim services would be inappropriate because of the nature of the victim. Sound judgment will, therefore, be required to make intelligent decisions as to the degree of victim services and assistance given. Department personnel should always err on the side of providing rather than withholding assistance.

2. A "witness" is defined as someone who has information or evidence concerning a crime, and provides information regarding his knowledge to a law enforcement agency. Where the witness is a minor, the term "witness" includes an appropriate family member. The term "witness" does not include defense witnesses or those individuals involved in the crime as a perpetrator or accomplice.

3. A "serious crime" is defined as a criminal offense that involves personal violence, attempted or threatened personal violence or significant property loss.

* Victim assistance should not be denied solely because there are multiple victims of an offense. For example, in a federal case involving a large-scale fraud scheme, it may be possible to extend victim services and assistance to a representative or representatives of the many victims of the crime.

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D. Responsibility

The responsibility to decide whether the provisions discussed in Part II of these guidelines should be applied initially or should be continued in a particular case is shared between that component of the Department responsible for investigating violations of federal law and the United States Attorneys' offices or Department attorneys who are responsible for prosecuting the perpetrators when they are identified. In cases where the United States or the public generally are the victims, victim services will normally be inappropriate (e.g., tax evasion and narcotics trafficking); but in virtually all cases there will be witnesses who will be entitled to witness services.

For cases in which the United States Attorney's office has become involved, the responsible official shall be the United States Attorney in whose district the prosecution is pending. For cases in which a litigating division of the Department of Justice is solely responsible, the responsible official shall be the chief of the section having responsibility for the case. The Department attorney handling the case shall perform the same duties under these guidelines as are required of an Assistant United States Attorney.

For cases under investigation, but in which the United States Attorney's office or Department of Justice litigating division has not assumed responsibility, application of these guidelines will be the responsibility of the following officials:

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1. With respect to offenses under investigation by the Federal Bureau of Investigation, the responsible official shall be the Special Agent in Charge of the Division having primary responsibility for conducting the investigation;

2. With respect to offenses under investigation by the Drug Enforcement Administration, the responsible official shall be the Special Agent in Charge of the office having primary responsibility for the investigation; and

3. With respect to offenses under investigation by the Immigration and Naturalization Service, the responsible official shall be the District Director or Chief Patrol Agent of the office having primary responsibility for conducting the investigation.

The responsibility for deciding that the provisions of Part II should be applied or continued may be delegated. The component of the Department making the decision that the provisions of Part II should apply or continue to be applied must ensure that they are in fact applied either through its own resources or through coordination with other components of the Department or other agencies.

United States Attorneys' offices, litigating divisions and investigative agencies shall designate or employ one or more persons specifically for the purpose of carrying out the provisions of Part II. Smaller offices or components may have no need for such a victim-witness coordinator on a full-time basis. In every office, however, each responsible official shall designate one individual as the primary contact for victim-witness services.

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All components of the Department shall cooperate with one another to the maximum extent possible in providing the services described in Part II. All components of the Department shall keep on file a written description of the procedures and materials used to provide assistance to victims and witnesses in individual cases. All components of the Department shall work with appropriate components of other federal agencies that investigate violations of federal law to assist them in providing services to victims and witnesses consistent with those described in Part II. Finally, all components of the Department shall take all steps necessary to coordinate their victim-witness service efforts with State and local law enforcement officials. Coordination of these efforts will take place, at minimum, through the Law Enforcement Coordinating Committees (LECC).

Where a victim or witness resides outside the judicial district in which the case is being prosecuted, the United States Attorney in the prosecuting district (or section chief of the litigating division) may, if necessary, seek the assistance of the United States Attorney's office in the district of residence in counseling, assisting or consulting with the victim or witness.

II. SERVICES TO VICTIMS AND WITNESSES

The responsible official should ensure that the following services are provided and that personal contact is initiated with victims and witnesses whenever possible.

A. Referral Services

Victims should receive information by the most appropriate and timely means, regarding available assistance. Depart-

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ment personnel should assist victims in contacting, where appropriate, the specific person or office which will provide the following:

1. Emergency medical and/or social services;
2. Compensation for which the victim may be entitled under applicable law and how to begin the process of applying for it; and
3. The availability of appropriate public or private programs that provide counseling, treatment, or support.

Victim witness assistance coordinators should develop and maintain accurate resource materials that identify available counseling and treatment programs in their jurisdictions.

B. Information Services

Victims and witnesses of serious crimes who provide a current address or telephone number should be advised of the following information in a timely manner. As a general rule, investigative components will be responsible for points 1 and 2, and prosecutive components for points 3 through 11.

1. Steps that may, if warranted, be taken to protect the victim, his family, and witnesses from intimidation;
2. The arrest or formal charging of the accused;
3. Scheduling changes and/or continuances affecting their appearance or attendance at judicial proceedings;
4. The release or detention status of the accused;
5. The acceptance of a plea of guilty or nolo contendere or the results of a trial;

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6. The date set for sentencing if the defendant is found guilty;

7. The sentence imposed including the date on which the defendant may be eligible for parole; and

8. For victims, the opportunity to address the court at the time of sentencing.

If the victim or witness has requested notice and has provided the responsible official with a current address or telephone number, he or she shall be advised in advance of the defendant's release from custody. In the event of an escape by the defendant, such victim or witness shall be apprised as soon as practicable. Moreover, a victim should be notified in advance of any parole hearing under the procedures specified above.

C. Consultation Services

Consistent with the interests of justice, Department officials should consult victims of serious crimes to obtain their views and provide explanations regarding the following:

1. The release of the accused pending judicial proceedings and the conditions thereof;

2. The decision not to seek an indictment or otherwise commence a prosecution;

3. The proposed dismissal of any or all charges, including dismissal in favor of State prosecution;

4. Any continuance of a judicial proceeding;

5. The proposed terms of any negotiated plea including any sentencing recommendation to be made by the prosecutor;

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6. The proposed placement of the accused in a pretrial diversion program;

7. The proposed proceeding against the accused as a juvenile defendant;

8. Restitution as described in Part IV; and

9. Presentation to the court of the victim's views regarding sentencing.

It is recognized that consultation services must be limited in some cases to avoid endangering the life or safety of a witness, jeopardizing an ongoing investigation or official proceeding or disclosing classified or privileged information.

D. Other Services

In addition to the services described above, additional assistance should be extended as follows:

1. Department officials should avoid, to the extent possible, disclosing the addresses of victims and witnesses. Prosecutors should resist attempts by the defense to obtain the addresses of victims and witnesses;

2. To the extent possible, victims and other witnesses for the prosecution who are called as witnesses in any judicial or administrative proceeding should be afforded a waiting area, removed from and out of sight and earshot of the defendant and defense witnesses;

3. Property of any victim or witness which is held for evidentiary purposes should be maintained in good condition and promptly returned. If the property is not to be returned promptly, an explanation should be given to the victim or witness

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as to the property's significance in any criminal prosecution;

4. Upon request by a victim or witness, the responsible official should assist in notifying:

a. The employer of the victim or witness if his cooperation in the investigation or prosecution of the crime causes his absence from work; and

b. The creditors of the victim or witness, where appropriate, if the crime or his cooperation in its investigation or prosecution affects his ability to make timely payments;

5. Responsible officials should establish programs to assist Department employees who are victims of crime;

6. Victims and witnesses should be provided information or assistance with respect to transportation, parking, translator services and related services; and

7. Responsible officials shall ensure that sexual assault victims are not required to assume the cost of physical examinations and materials used to obtain evidence; if a victim is billed for such an examination or materials, the victim shall be reimbursed therefor by the appropriate component of the Department.

III. Victim Impact Statement

The responsible official should ensure that the appropriate U. S. Probation Officer is fully advised of the information in his possession pertinent to preparation of the victim impact statement required by Rule 32(c)(2) of the Federal Rules of Criminal Procedure so that the report will fully reflect the effects of the crime upon victims as well as the appropriateness

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and amount of restitution. The victim should be apprised that the Probation Officer is required to prepare a victim impact statement which includes a provision on restitution. The victim should be advised as to how to communicate directly with the Probation Officer if he or she so desires. Consistent with available resources and their other responsibilities, federal prosecutors should advocate the interests of victims at the time of sentencing.

IV. Restitution

Restitution may be ordered under 18 U.S.C. 3579. Consistent with available resources and their other responsibilities, federal prosecutors should advocate fully the rights of victims on the issue of restitution unless such advocacy would unduly prolong or complicate the sentencing proceeding.

V. Obstruction of Justice

Victims or witnesses should routinely receive information on the prohibition against victim or witness intimidation and harassment and the remedies therefor. The responsible official should, if warranted, advise the component of the Department having the enforcement responsibilities as set forth in 28 C.F.R. 0.179a, of instances involving intimidation or harassment of any victim or witness.

VI. Training

All components of the Department of Justice covered by the provisions of these guidelines should, beginning not later than 30 days after the issuance of these guidelines, provide training to existing and new employees concerning their responsibilities

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in carrying out these guidelines and provide written instructions to appropriate subcomponents to ensure that the provisions of this part are implemented.

Further, all training units conducted or supported by the Department of Justice shall develop programs which address victim assistance from the perspective of the personnel they train. These units include the FBI Academy at Quantico, the Attorney General's Advocacy Institute, and field training conducted by the FBI and DEA. Through agreements between the Departments of Justice and Treasury, similar efforts shall be undertaken at the Federal Law Enforcement Training Center at Glynco, Georgia.

VII. Non-Litigability

These guidelines provide only internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of Justice. Rather, these guidelines are intended to ensure that responsible officials, in the exercise of their discretion, treat victims and witnesses fairly and with understanding.

Approved this 9th day of July, 1983.



William French Smith
Attorney General

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