

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1672 Session of
1983

INTRODUCED BY SWEET, RAPPAPORT, SPENCER, HAGARTY, LASHINGER,
COY, O'DONNELL, MANDERINO, EVANS, MAIALE, HOEFFEL, WOGAN,
KASUNIC, BURD, KUKOVICH, FATTAH, WOZNIAK, BELFANTI, TRUMAN,
WACHOB, CALTAGIRONE, WAMBACH, PISTELLA, KOSINSKI, RYBAK,
KOWALYSHYN, MRKONIC, PHILLIPS, MORRIS, CAWLEY, TIGUE,
MICHLOVIC, GEIST, PRATT, CIMINI, JOHNSON, DeLUCA, COLAFELLA,
VAN HORNE, OLASZ, DEAL, GALLAGHER, WIGGINS, LINTON, OLIVER,
CARN, HARPER, BARBER, LESCOVITZ, DOMBROWSKI, DALEY, LEHR,
ARTY, BELOFF, PETRARCA, TRELLO, McVERRY, SAURMAN,
D. R. WRIGHT, PETRONE, MAYERNIK, AFFLERBACH, E. Z. TAYLOR,
PRESTON, DAWIDA, BLAUM, WILLIAMS, LEVIN, CORDISCO,
R. C. WRIGHT, REBER AND STEVENS, OCTOBER 26, 1983

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 26, 1983

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
2 "An act providing for and reorganizing the conduct of the
3 executive and administrative work of the Commonwealth by the
4 Executive Department thereof and the administrative
5 departments, boards, commissions, and officers thereof,
6 including the boards of trustees of State Normal Schools, or
7 Teachers Colleges; abolishing, creating, reorganizing or
8 authorizing the reorganization of certain administrative
9 departments, boards, and commissions; defining the powers and
10 duties of the Governor and other executive and administrative
11 officers, and of the several administrative departments,
12 boards, commissions, and officers; fixing the salaries of the
13 Governor, Lieutenant Governor, and certain other executive
14 and administrative officers; providing for the appointment of
15 certain administrative officers, and of all deputies and
16 other assistants and employes in certain departments, boards,
17 and commissions; and prescribing the manner in which the
18 number and compensation of the deputies and all other
19 assistants and employes of certain departments, boards and
20 commissions shall be determined," further providing for
21 provisions relating to crime victims' compensation;
22 reestablishing and continuing the Crime Victim's Compensation
23 Board; and making an editorial change.

24 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 477 of the act of April 9, 1929 (P.L.177,
3 No.175), known as The Administrative Code of 1929, amended
4 December 10, 1976 (P.L.1305, No.287) and December 13, 1979
5 (P.L.519, No.114), is amended to read:

6 Section 477. Definitions.--So far as it relates to the crime
7 victim's compensation provisions, the following terms shall be
8 defined as:

9 "Board" means the Crime Victim's Compensation Board.

10 "Claimant" means the person filing a claim pursuant to this
11 act.

12 "Crime" means an act committed in Pennsylvania which, if
13 committed by a mentally competent, criminally responsible adult,
14 who had no legal exemption or defense, would constitute a crime
15 as defined in and proscribed by Title 18 of the "Pennsylvania
16 Consolidated Statutes," (relating to crimes and offenses) or any
17 other penal law of the Commonwealth: Provided, however, That no
18 act involving the operation of a motor vehicle which results in
19 injury shall constitute a crime for the purpose of this act
20 unless such injury was intentionally inflicted through the use
21 of a motor vehicle.

22 "Family," when used in reference to a person, shall mean (i)
23 anyone related to such person within the third degree of
24 consanguinity or affinity, (ii) anyone maintaining a common-law
25 relationship with such person, or (iii) anyone residing in the
26 same household with such person.

27 "Intervenor" shall mean a person who goes to the aid of
28 another and suffers bodily injury or death as a direct result of
29 acting not recklessly to prevent the commission of a crime, or
30 to lawfully apprehend a person reasonably suspected of having

1 committed such crime, or to aid the victim of such crime.

2 "Local law enforcement agency" means a police department of a
3 city, borough, incorporated town or township.

4 "Loss of earnings" in addition to its ordinary meaning, shall
5 mean the loss of the cash equivalent of a social security
6 payment where social security is the sole source of the victim's
7 income and where the victim is deprived of the money as a direct
8 result of a crime.

9 "Out-of-pocket loss" means the unreimbursed and
10 unreimbursable expenses or indebtedness incurred for medical
11 care, nonmedical remedial care and treatment rendered in
12 accordance with a religious method of healing as approved by the
13 board, or other services, including psychological counseling,
14 reasonably necessary as a result of the injury upon which the
15 claim is based and for which the claimant either has paid or is
16 liable to include expenses for physical examinations and
17 materials used to obtain evidence. In no case shall property
18 damages or compensation for pain and suffering be included.

19 "Victim" shall mean a person, other than the alleged
20 offender, who suffers bodily injury [or], death or the loss of
21 the proceeds of a social security payment which is the sole
22 income of the recipient as a direct result of a crime.

23 Section 2. Section 477.1(e) of the act, added July 9, 1976
24 (P.L.574, No.139), is amended to read:

25 Section 477.1. Crime Victim's Compensation Board.--* * *

26 (e) [The members of the board shall devote their full time
27 and capacity to their duties. The members of the board shall
28 receive an annual starting salary of twenty-five thousand
29 dollars (\$25,000). Thereafter they shall receive an annual
30 salary to be fixed by the Executive Board of the Commonwealth

1 within the amount made available by appropriation. The chairman
2 shall receive five hundred dollars (\$500) additional
3 compensation per annum.] The chairman shall devote his full time
4 and capacity to his duties. The remaining members of the board
5 shall serve on a part-time basis. The chairman shall receive a
6 starting salary of twenty-five thousand five hundred dollars
7 (\$25,500). Thereafter he or she shall receive an annual salary
8 to be fixed by the Executive Board of the Commonwealth within
9 the amount made available by appropriation. The remaining
10 members of the board shall receive a per diem salary of one
11 hundred dollars (\$100) per day based on guidelines set forth by
12 the Executive Board plus reasonable expenses for travel, lodging
13 and meals.

14 Section 3. Section 477.2(a) of the act, added July 9, 1976
15 (P.L.574, No.139), is amended and a subsection is added to read:
16 Section 477.2. Powers and Duties of Board.--The board shall
17 have the following powers and duties:

18 (a) To establish and maintain a principal office in or near
19 Harrisburg [and such other offices within the Commonwealth as it
20 may deem necessary].

21 * * *

22 (1) To administer the Crime Victim's Compensation Fund,
23 created under 42 Pa.C.S. § 1725.3 (relating to mandatory costs),
24 for the payment of claims filed under this act and for all
25 reasonable and necessary administrative expenses.

26 Section 4. Section 477.3 of the act, added July 9, 1976
27 (P.L.574, No.139), is amended to read:

28 Section 477.3. Persons Eligible for Compensation.--(a)
29 Except as provided in subsection (b) of this section, the
30 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.

(5) Any person who legally assumes the obligation or who voluntarily pays the funeral or burial expenses incurred as a direct result of the crime.

(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] if, at the conclusion of the criminal proceeding, the offender is living in the same household as the victim and will benefit from the award. The Attorney General may sue to recover the award if the offender at any time benefits from the award.

(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.

Section 5. Section 477.5 of the act is repealed.

1 Section 6. Section 477.9 of the act, added July 9, 1976
2 (P.L.574, No.139) and amended December 13, 1979 (P.L.519,
3 No.114), is amended to read:

4 Section 477.9. Awards.--(a) No award shall be made unless
5 the board or board member, as the case may be, finds by a
6 preponderance of the evidence that:

7 (1) A crime was committed.

8 (2) The person injured or killed was a victim or intervenor
9 as defined in section 477.

10 (3) Such crime was promptly reported to the proper
11 authorities; and in no case may an award be made where the
12 record shows that such report was made more than seventy-two
13 hours after the occurrence of such crime unless the board, for
14 good cause shown, finds the delay to have been justified. The
15 board, upon finding that any claimant, victim or intervenor has
16 not fully cooperated with all law enforcement agencies, may deny
17 or withdraw any award, as the case may be.

18 (b) Any award made pursuant to [sections 477 to 477.15] the
19 provisions of this act shall be in an amount not exceeding out-
20 of-pocket loss, together with loss of past, present or future
21 earnings or support resulting from such injury. In no case shall
22 the total amount of an award exceed [twenty-five thousand
23 dollars (\$25,000)] thirty-five thousand dollars (\$35,000).

24 (c) Any award made for loss of earnings or support shall,
25 unless reduced pursuant to other provisions of this act, be in
26 an amount equal to the actual loss sustained: Provided, however,
27 That no such award shall exceed [two hundred dollars (\$200)] the
28 average weekly wage in Pennsylvania as determined annually by
29 the Department of Labor and Industry at the time the crime was
30 committed for each week of lost earnings or support: And,

1 provided further, That the aggregate award for such loss shall
2 not exceed [ten thousand dollars (\$10,000)] fifteen thousand
3 dollars (\$15,000) except that in the case of death of a victim
4 or intervenor, the aggregate award shall not exceed [fifteen
5 thousand dollars (\$15,000)] twenty thousand dollars (\$20,000).

6 (d) If there are two or more persons entitled to an award as
7 a result of the death of a victim or intervenor, the award shall
8 be apportioned among the claimants.

9 (e) Except for claims involving dismemberment or loss of an
10 eye, any award made pursuant to this act shall be reduced by the
11 amount of any payments received or to be received by the
12 claimant as a result of the injury (i) from or on behalf of the
13 person who committed the crime, (ii) under any insurance
14 programs including those mandated by law, (iii) under any
15 contract of insurance wherein the claimant is the insured
16 beneficiary, (iv) from public funds, or (v) as an emergency
17 award pursuant to section 477.8 of this act.

18 (f) In determining the amount of an award, the board or
19 board member, as the case may be, shall determine whether,
20 because of his conduct, the victim or intervenor contributed to
21 the infliction of his injury, and the board or board member
22 shall reduce the amount of the award or deny the claim
23 altogether in accordance with such determination: Provided,
24 however, That the board or board member, as the case may be, may
25 disregard for this purpose the contribution of the intervenor to
26 his own injury where the record shows that such contribution was
27 attributed to efforts by an intervenor as set forth in section
28 477.

29 Section 7. Section 477.13 of the act, added July 9, 1976
30 (P.L.574, No.139), is amended to read:

1 Section 477.13. Restitution.--To the extent that restitution
2 is ordered pursuant to any other existing law, either prior to
3 or subsequent to the making of an award by this board, such
4 restitution shall be paid to the [Commonwealth] Crime Victim's
5 Compensation Fund created under 42 Pa.C.S. § 1725.3 (relating to
6 mandatory costs) to the extent of the award by the board.

7 Section 8. Section 477.17 of the act, added December 13,
8 1979 (P.L.519, No.144), is amended to read:

9 Section 477.17. Responsibilities of Local Law Enforcement
10 Agencies.--(a) All local law enforcement agencies shall insure
11 that all of its officers and employees are familiar with crime
12 victim's compensation as provided for in sections 477 through
13 477.17 of this act. Instruction concerning crime victim's
14 compensation shall be made a part of the training curriculum for
15 all trainee officers.

16 (b) Local law enforcement agencies shall advise the victims
17 of crimes reported to it of the availability of crime victim's
18 compensation as provided by this act. The term "victim" as used
19 in this subsection shall be a victim as defined by this act. The
20 notice required under this subsection shall be in writing and
21 shall include the following paragraph:

22 "If you have sustained physical injury as a direct result
23 of a crime of violence, or are legally dependent for support
24 upon a person who has sustained physical injury or death as a
25 direct result of a crime of violence, or, in the event of a
26 death caused by a crime of violence, you have legally assumed
27 or voluntarily paid the medical or burial expenses incurred
28 as a direct result thereof, you may qualify for
29 indemnification by the State of Pennsylvania for the out-of-
30 pocket wages, medical or burial expenses which you have

1 incurred as a result of the crime. Claims must be filed with
2 the Crime Victim's Compensation Board for the State of
3 Pennsylvania. For further information regarding this program,
4 please contact:

5 (Name, business address and telephone
6 number of the local law enforcement
7 agency)

8 or

9 Crime Victim's Compensation Board

10 [Department of Justice]

11 Office of General Counsel

12 Harrisburg, Pennsylvania

13 Important: The statute provides that, absent certain
14 extenuating circumstances, a claimant has one year from the
15 date of the crime to file his claim with the Crime Victim's
16 Compensation Board."

17 (c) The written notification provided for in subsection (b)
18 shall be accompanied by [three copies] one copy of the
19 application form for crime victim's compensation. These forms
20 shall be supplied by the Crime Victim's Compensation Board to
21 all local law enforcement agencies. The record of the date and
22 address of all letters of notification shall be maintained by
23 every local law enforcement agency.

24 (d) Any officer of a local law enforcement agency whose
25 duties include the investigation of crimes may notify victims or
26 their families of the availability of compensation under this
27 act by giving them a card or sheet bearing the paragraph as
28 quoted in subsection (b) above. A record of such personal notice
29 shall be maintained by the local law enforcement agency.

30 (e) In municipalities which do not have a local law

1 enforcement agency, the board shall by rule establish procedures
2 whereby it, together with the State Police, shall give the
3 notice to victims of crimes as provided in this section.

4 Section 9. Section 477.18 of the act, added December 14,
5 1982 (P.L.1213, No.280), is amended to read:

6 Section 477.18. Distribution of Moneys Received as a Result
7 of the Commission of Crime.--(a) Every person, contracting with
8 any person or the representative or assignee of any person[,]
9 accused or convicted of a crime in this Commonwealth, with
10 respect to the reenactment of such crime, by way of a movie,
11 book, magazine article, tape recording, phonograph record, radio
12 or television presentation, live entertainment of any kind, or
13 from the expression of [such] the accused or convicted person's
14 thoughts, feelings, opinions or emotions regarding such crime,
15 shall notify the board of the contractual arrangements and shall
16 pay over to the board any moneys which would otherwise, by terms
17 of such contract, be owing to the person so accused or convicted
18 or his representatives. The board shall deposit such moneys in
19 an escrow account for the benefit of and payable to any [victim
20 of crimes committed by such person, provided that such person is
21 eventually convicted of the crime] eligible person and provided
22 [further] that such [victim] eligible person, within five years
23 of the date of the [crime] establishment of such escrow account,
24 brings a civil action for damages on any legal theory in a court
25 of competent jurisdiction and recovers a money judgment against
26 such accused or convicted person or his representatives[.] and
27 provided further that in the case of an accused person, such
28 person is eventually convicted. However, the accused or
29 convicted person may voluntarily request that the board make
30 payments to eligible persons who have not recovered money

1 judgments. In the case of an accused making such a voluntary
2 request, no payment shall be made until such person is convicted
3 and, upon conviction, the trial judge presiding over the case
4 shall determine the proportions of available escrow moneys
5 payable to each eligible person and shall certify those amounts
6 to the board. In the case of a convicted person making such a
7 voluntary request, the board shall determine the proportion of
8 available escrow moneys payable to eligible persons.

9 (b) (1) As used in this section, the term "eligible person"
10 shall include any of the following persons:

11 (i) A victim of the particular crime in question.

12 (ii) An intervenor in such crime.

13 (iii) A surviving spouse, parent or child of a deceased
14 victim of, or intervenor in, such crime.

15 (iv) Any other person dependent for his principal support
16 upon a deceased victim of, or intervenor in, such crime.

17 No person who is criminally responsible for the crime in
18 question or was an accomplice of the person who is criminally
19 responsible shall be an eligible person.

20 (2) As used in this section, the term "convicted" includes
21 conviction by entry of a plea of guilty or nolo contendere,
22 conviction after trial, and a finding of not guilty due to
23 insanity or of guilty but mentally ill.

24 [(b) The] (c) Upon receiving escrow moneys, the board shall
25 notify all eligible persons that the escrow money is available
26 to satisfy money judgments or that the accused or convicted has
27 voluntarily requested that payments be made in the absence of a
28 money judgment. If, after a good faith effort, the board is
29 unable to give personal notice to each such eligible person, the
30 board, at least once every six months for five years from the

1 date it receives such moneys, shall cause to have published a
2 legal notice in newspapers of general circulation in each county
3 advising such [victims] eligible persons that such escrow moneys
4 are available to satisfy money judgments pursuant to this
5 section or that the accused or convicted has voluntarily
6 requested that payments be made in the absence of a money
7 judgment.

8 [(c)] (d) Upon disposition of charges favorable to any
9 person accused of committing a crime, or upon a showing by such
10 person that five years have elapsed from the establishment of
11 such escrow account and further that no actions are pending
12 against such person pursuant to this section, the board shall
13 immediately pay over any moneys in the escrow account to such
14 person.

15 [(d)] (e) Notwithstanding any inconsistent provision of law
16 and rules of civil procedure with respect to the timely bringing
17 of an action, the five-year period provided for in subsection
18 (a) shall not begin to run until an escrow account has been
19 established.

20 [(e) Notwithstanding the foregoing provisions of this
21 section,]

22 (f) No payment to eligible persons shall be made from the
23 escrow account without official certification by the trial judge
24 that the criminal charges have been adjudicated finally,
25 including the disposition of any appeal. However, the board
26 shall make payments from an escrow account to [any person
27 accused of crime] an accused person prior to final adjudication
28 of the criminal charges upon the order of a court of competent
29 jurisdiction after a showing by such person that such moneys
30 shall be used for the exclusive purpose of retaining legal

1 representation at any stage of the proceedings against such
2 person, including the appeals process. The amount authorized for
3 attorneys' fees, expert witnesses and other costs of litigation
4 shall be approved and certified to the board by the judge
5 presiding at the trial of the accused.

6 [(f)] (g) Any action taken by any person convicted of a
7 crime, whether by way of execution of a power of attorney,
8 creation of corporate entities or otherwise, to defeat the
9 purpose of this section shall be null and void as against the
10 public policy of this Commonwealth.

11 Section 10. This act shall constitute the legislation
12 required to reestablish and continue an agency pursuant to the
13 requirements and provisions of the act of December 22, 1981
14 (P.L.508, No.142), known as the Sunset Act. The Crime Victim's
15 Compensation Board is hereby reestablished and continued until
16 December 31, 1986.

17 Section 11. The provisions of sections 1 and 6 of this act
18 shall apply to claims arising out of crimes committed on or
19 after the effective date of this act.

20 Section 12. This act shall take effect immediately.