

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2361

Session of  
1990

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INTRODUCED BY CALTAGIRONE, MRKONIC, FOX, KUKOVICH, ALLEN, PESCI, BILLOW, HERMAN, KONDRICH, COLAFELLA, NAHILL, JOHNSON, KOSINSKI, NAILOR, COY, JOSEPHS, JADLOWIEC, STISH, PRESTON, PRESSMANN, KASUNIC, RYBAK, LEE, PETRARCA, DEMPSEY, ARGALL, MERRY, MORRIS, CAPPABIANCA, D. R. WRIGHT, GIGLIOTTI, FREEMAN, G. SNYDER, BUNT, McVERRY, RITTER, LAUGHLIN, PISTELLA, VEON, CORRIGAN, SAURMAN, TANGRETTI, ANGSTADT, GODSHALL, MAIALE, HOWLETT, MAINE, DeWEESE, ROBINSON, NOYE, J. TAYLOR, SEMMEL, J. H. CLARK, SERAFINI, LINTON, DORR, DeLUCA AND TRELLO, MARCH 20, 1990

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AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 3, 1990

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## 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 crime  
21 victims' compensation.

22 The General Assembly of the Commonwealth of Pennsylvania  
23 hereby enacts as follows:

1       Section 1.   Section 477 of the act of April 9, 1929 (P.L.177,  
2   No.175), known as The Administrative Code of 1929, amended or  
3   added June 30, 1984 (P.L.458, No.96) and December 11, 1986  
4   (P.L.1490, No.155), is amended to read:

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

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

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

11       ["Crime" means an act committed in Pennsylvania which, if  
12   committed by a mentally competent, criminally responsible adult,  
13   who had no legal exemption or defense, would constitute a crime  
14   as defined in and proscribed by Title 18 of the "Pennsylvania  
15   Consolidated Statutes," (relating to crimes and offenses) or  
16   enumerated in the act of April 14, 1972 (P.L.233, No.64), known  
17   as "The Controlled Substance, Drug, Device and Cosmetic Act":  
18   Provided, however, That no act involving the operation of a  
19   motor vehicle which results in injury shall constitute a crime  
20   for the purpose of this act unless such injury was intentionally  
21   inflicted through the use of a motor vehicle.]

22       "Crime" means an act, including an act resulting in injury  
23   intentionally inflicted through the use of a motor vehicle,  
24   which was committed:

25       (1) In Pennsylvania by a person who had no legal exemption  
26   or defense and which would constitute a crime only as defined  
27   in, proscribed by or enumerated in:

28       (i) 18 Pa.C.S. (relating to crimes and offenses), 30 Pa.C.S.  
29   § 5502 (relating to operating watercraft under influence of  
30   alcohol or controlled substance) or 5502.1 (relating to homicide

1 by watercraft while operating under influence) and 75 Pa.C.S. §  
2 3731 (relating to driving under influence of alcohol or  
3 controlled substance) or 3735 (relating to homicide by vehicle  
4 while driving under influence);

5 (ii) the act of April 14, 1972 (P.L.233, No.64), known as  
6 "The Controlled Substance, Drug, Device and Cosmetic Act"; or

7 (iii) the laws of the United States, except acts which are  
8 enumerated in section 10601(f) of the Victim's of Crime Act of  
9 1984 (42 U.S.C. § 10601(f)), as amended.

10 (2) Against a resident of Pennsylvania which would be a  
11 crime under paragraph (1), but for its occurrence in a state  
12 other than Pennsylvania.

13 "Diversionary program" means a program used to divert the  
14 defendant to an alternative form of disposition under the  
15 Pennsylvania Rules of Criminal Procedure or statutory authority  
16 and includes those dispositions authorized by Rules 160, 176 and  
17 314 of the Pennsylvania Rules of Criminal Procedure and sections  
18 17 and 18 of the act of April 14, 1972 (P.L.233, No.64), known  
19 as "The Controlled Substance, Drug, Device and Cosmetic Act."

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

25 "Injury" shall include physical or mental damages incurred as  
26 a direct result of the crime and aggravation of existing  
27 injuries if additional losses can be attributed to the direct  
28 result of the crime. Compensation for mental damages shall be  
29 limited to expenses incurred for psychological or psychiatric  
30 services which became necessary as a direct result of the crime.

1 "Intervenor" shall mean a person who goes to the aid of  
2 another and suffers physical or mental injury or death as a  
3 direct result of acting not recklessly to prevent the commission  
4 of a crime, or to lawfully apprehend a person reasonably  
5 suspected of having committed such crime, or to aid the victim  
6 of such crime.

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

9 "Loss of earnings," in addition to its ordinary meaning,  
10 shall mean the loss of the cash equivalent of [a] ONE MONTH'S <—  
11 social security, railroad retirement, pension plan, retirement  
12 plan, disability, child support or spousal support payment,  
13 where said payment is the primary source of the victim's income  
14 and where the victim is deprived of the money as a direct result  
15 of a crime.

16 "Out-of-pocket loss" means the unreimbursed and  
17 unreimbursable expenses or indebtedness incurred for medical  
18 care, nonmedical remedial care and treatment rendered in  
19 accordance with a religious method of healing as approved by the  
20 board, or other services, including psychological counseling,  
21 prosthetic devices, eyeglasses or other corrective lenses, or  
22 dental devices, reasonably necessary as a result of the injury  
23 upon which the claim is based and for which the claimant either  
24 has paid or is liable, to include expenses for physical  
25 examinations and materials used to obtain evidence. In no case  
26 shall property damages or compensation for pain and suffering be  
27 included.

28 "Victim" shall mean a person against whom a crime has been  
29 committed, ~~including the parent, sibling, spouse, or child of~~ <—  
30 ~~such person,~~ other than the alleged offender, who, as a direct

1 result of the crime, suffers physical or mental injury, death or  
2 the loss of earnings as herein defined[.], and shall include a  
3 resident of Pennsylvania against whom an act has been committed  
4 which otherwise would constitute a crime as defined in this act  
5 but for its occurrence in a state other than Pennsylvania and  
6 for which the person would otherwise be compensated by the crime  
7 victim compensation program of the state where the act occurred  
8 but for the ineligibility of such program under the provisions  
9 of the Victim's of Crime Act of 1984 (42 U.S.C. § 10601, et  
10 seq.), as amended.

11 ~~Section 2. Sections 477.3(b), 477.9(e) and 477.15 of the~~ <—  
12 ~~act, amended or added June 30, 1984 (P.L.458, No.96), are~~  
13 ~~amended to read:~~

14 SECTION 2. SECTION 477.3(B) AND (D) OF THE ACT, AMENDED JUNE <—  
15 30, 1984 (P.L.458, NO.96) AND DECEMBER 11, 1986 (P.L.1490,  
16 NO.155), ARE AMENDED TO READ:

17 Section 477.3. Persons Eligible for Compensation.--\* \* \*

18 (b) A person who is criminally responsible for the crime  
19 upon which a claim is based or an accomplice of such person  
20 shall not be eligible to receive compensation with respect to  
21 such claim. A member of the family of the person who committed  
22 the crime shall not be eligible if the offender is living in the  
23 same household as the victim and will substantially benefit from  
24 the award. The Attorney General may sue the offender or the  
25 victim or both to recover the award if the offender at any time  
26 benefits from the award.

27 \* \* \*

28 (D) WHERE A CRIME RESULTS IN DEATH, THE SPOUSE, CHILDREN, <—  
29 PARENTS OR SIBLINGS OF THE VICTIM, WHO RESIDE WITHIN THE SAME  
30 HOUSEHOLD AS THE VICTIM, SHALL BE ELIGIBLE FOR COMPENSATION FOR

1 THE COST OF PSYCHOLOGICAL COUNSELING [WHICH IS] AND OTHER  
2 REASONABLE OUT-OF-POCKET LOSSES WHICH ARE DEEMED NECESSARY AS A  
3 DIRECT RESULT OF THE CRIMINAL INCIDENT.

4 SECTION 3. SECTION 477.9(E) AND 477.15 OF THE ACT, AMENDED  
5 OR ADDED JUNE 30, 1984 (P.L.458, NO.96), ARE AMENDED TO READ:

6 Section 477.9. Awards.--\* \* \*

7 (e) Except for any payments or proceeds that are  
8 specifically denominated as compensation for dismemberment or  
9 loss of an eye, any award made pursuant to this act shall be  
10 reduced by the amount of any payments received or to be received  
11 by the claimant as a result of the injury (i) from or on behalf  
12 of the person who committed the crime, (ii) under any insurance  
13 programs including those mandated by law, (iii) under any  
14 contract of insurance wherein the claimant is the [insured]  
15 beneficiary, (iv) from public funds, [or] (v) as an emergency  
16 award pursuant to section 477.8 of this act, or (vi) under any  
17 pension program, including those providing for disability or  
18 survivor's benefits.

19 \* \* \*

20 Section 477.15. **[Mandatory] Costs.**--(a) Any person who <—  
21 pleads guilty or nolo contendere or who is convicted of any  
22 crime, as defined in section 477 shall, in addition to costs  
23 imposed pursuant to 42 Pa.C.S. § 3571(c) (relating to  
24 Commonwealth portion of fines, etc.), be sentenced to pay costs  
25 of at least [fifteen dollars (\$15).] thirty dollars (\$30), but <—  
26 no more than the sum of thirty dollars (\$30) plus the statutory  
27 maximum monetary penalty for the offense committed. AND MAY BE <—  
28 SENTENCED TO PAY ADDITIONAL COSTS IN AN AMOUNT UP TO THE  
29 STATUTORY MAXIMUM MONETARY PENALTY FOR THE OFFENSE COMMITTED.

30 (b) Any person placed in a diversionary program, as defined

1 in section 477, shall be required to pay costs of at least  
2 thirty dollars (\$30), in addition to costs imposed pursuant to  
3 42 Pa.C.S. § 3571(c).

4 [(b)] (c) Ten dollars (\$10) of the costs imposed under  
5 subsections (a) and (b) plus thirty per centum (30%) of the  
6 costs imposed under subsection (a) which exceed thirty dollars  
7 (\$30) shall be paid into a special nonlapsing fund, which is  
8 hereby established, for use by the Crime Victim's Compensation  
9 Board for payment to victims.

10 [(c) Five dollars (\$5)] (d) Twenty dollars (\$20) of the  
11 costs imposed under subsections (a) and (b) plus seventy per  
12 centum (70%) of the costs imposed under subsection (a) which  
13 exceed thirty dollars (\$30) shall be paid into a special  
14 nonlapsing fund, which is hereby established, for use by the  
15 Commission on Crime and Delinquency for victim-witness services  
16 grants and technical assistance in accordance with this section.

17 [(d)] (e) This cost shall be imposed notwithstanding any  
18 other provision to this act or other act to the contrary.

19 [(e)] (f) The district attorney, the Crime Victim's  
20 Compensation Board, the Commission on Crime and Delinquency or  
21 any victim of a crime (as defined in section 477) shall have  
22 standing to seek a mandamus order requiring the county to  
23 collect the costs imposed by this section.

24 Section ~~3~~ 4. This act shall take effect ~~in 60 days~~. AS

<—

25 FOLLOWS:

26 (1) SECTION 1 (SECTION 477) SHALL TAKE EFFECT OCTOBER 1,  
27 1990.

28 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60  
29 DAYS.