

By Mr. Mackey of Somerville, petition of Joseph K. Mackey relative to the payment of compensation to victims of crime and to the victim's immediate family members. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety.

AN ACT RELATIVE TO THE COMPENSATION OF VICTIMS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 258B of the General Laws, as appearing
2 in the 1986 Official Edition, is hereby amended by adding after
3 section 3 the following section: —

4 Section 3A. A victim of a crime and the victim's immediate
5 family members shall be compensated for each day the victim or
6 immediate family member is required to attend the trial of the
7 person accused of said crime.

8 Each regularly employed victim and immediate family members
9 shall be paid regular wages by his employer for the first three days
10 lost from work. Regular employment shall include part-time,
11 temporary, and casual employment as long as the employment
12 hours of the victim or immediate family member may be
13 determined by a schedule or by custom and practice.

14 The court shall have authority to excuse an employer from the
15 duty to compensate an employee who is a victim or immediate
16 family member, or to excuse a self-employed victim or immediate
17 family member from the duty to compensate himself for the first
18 three days, or part thereof, of attendance at a trial upon a finding
19 that extreme financial hardship would be imposed upon the
20 employer or self-employed person if such duty were not removed.
21 If an employer or self-employed victim or immediate family
22 member is so excused, the court shall award reasonable
23 compensation in lieu of wages to the victim or immediate family
24 member to be paid by the commonwealth for the first three days,
25 or part thereof, of attendance at trial.

26 Each victim or immediate family member thereof shall be
27 compensated at the rate of fifty dollars per day for the fourth and
28 subsequent days of the offender's trial. A victim or immediate
29 family member receiving payment shall not be entitled to
30 additional reimbursement for travel or other out-of-pocket
31 expenses.

32 Each unemployed victim or immediate family member upon
33 application shall be reimbursed by the commonwealth for
34 reasonable travel, child care, and other necessary out-of-pocket
35 expenses, except food, incurred during the first three days, or part
36 thereof, of trial attendance. The Victim and Witness Assistance
37 Board shall establish guidelines for reimbursement of victims or
38 immediate family members. A reimbursement award shall be
39 approved by the court prior to such reimbursement. A
40 reimbursement award shall not exceed fifty dollars per day of trial
41 attendance. Any victim or immediate family member who is not
42 regularly employed, including but not limited to retired persons,
43 homemakers, students, and unemployed persons, shall be entitled
44 to reimbursement upon application. The application for
45 reimbursement shall be made prior to the first day of the trial.
46 An unemployed victim or immediate family member receiving
47 benefits under the laws of employment security of this
48 commonwealth shall not lose such benefits on account of his
49 performance on the first three days of attendance.

50 The Attendance Certificate shall contain the name and address
51 of the victim or immediate family member; the name, address, and
52 judicial district of the court in which the trial was held; the week
53 in which the certificate applies; the number of days of which the
54 victim or immediate family member attended the trial during said
55 week, and the specific dates thereof; the total compensation
56 received by the victim or immediate family member from the
57 commonwealth during the said week; a declaration of the duty
58 of an employer to compensate an employee for the first three days,
59 or part thereof, of trial attendance and the right of an employer
60 to be excused from such duty by the court upon showing of
61 extreme financial hardship; and any other information which the
62 Victim and Witness Assistance Board deems appropriate. Each
63 Attendance Certificate shall be completed in duplicate, one copy
64 for the victim or immediate family member, one copy for the
65 employer.

66 Each week, the Victim and Witness Assistance Board shall mail
67 attendance certificates to those victims or immediate family
68 members who have attended trials the previous week. A victim
69 or immediate family member seeking compensation from his
70 employer for trial attendance shall tender the employer's copy of
71 the attendance certificate to his employer as soon as practical after
72 its receipt. A notice of this duty shall appear prominently on the
73 certificate.

74 Victims or immediate family members shall receive compensa-
75 tion by check on a weekly basis. Each check shall include all
76 compensation for attendance at trial and authorized reimburse-
77 ments incurred during previous week. The Victim and Witness
78 Assistance Board shall prepare and mail these checks. The
79 comptroller of the commonwealth shall establish a separate
80 account for victims and immediate family member's compensa-
81 tion and reimbursements under this section. The Victims and
82 Witness Assistance Board shall draw upon this account for all
83 checks issued under this section. The checks may be issued with
84 data processing equipment, and a printed or stamped facsimile
85 signature of the chair of the Victim and Witness Assistance Board
86 shall be authorized.

87 Any employer who fails to compensate an employee who is a
88 victim or immediate family member under the applicable
89 provisions of this section and who had not been excused from such
90 duty or compensation shall be liable to the employee in tort. Upon
91 the expiration of thirty days after the tender of the Attendance
92 Certificate to the employer, the employee may commence a civil
93 action in any superior or district court having jurisdiction over
94 the parties. Extreme financial hardship shall not be a defense to
95 this action. The court may award treble damages and reasonable
96 attorney fees to the employee upon a finding of willful conduct
97 by the employer.

