

By Mr. Alexander of Marblehead, petition of Kevin M. Burke, Lawrence R. Alexander, Christopher J. Hodgkins, Carmen D. Buell, Geoffrey C. Beckwith and Sherwood Guernsey relative to the compensation of victims of violent crimes. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT RELATIVE TO THE COMPENSATION OF VICTIMS OF VIOLENT
CRIMES.

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

1 Chapter 258A of the General Laws is hereby amended by the
2 following: —

3 *Section 1.* Striking out the first paragraph of section one and
4 inserting in place thereof the following new paragraph: —

5 “Crime”, an act committed in the Commonwealth which, if
6 committed by a mentally competent, criminally responsible adult
7 or juvenile who had no legal exemption or defense, would consti-
8 tute a crime; provided that such act involves the application of
9 force or violence or the threat of force or violence by the offender
0 upon the victim; and provided, further, that no act involving the
1 operation of a motor vehicle which results in injury to another
2 shall constitute a crime for the purpose of this chapter unless such
3 injury was intentionally inflicted through the use of a motor
4 vehicle.

5 Adding the following new definitions to Section One: —

6 “Medical Care”, the medical, psychological, surgical, dental,
7 optometric, chiropractic, podiatric, and hospital care; medicines;
8 medical, dental and surgical supplies, crutches; artificial members;
9 appliances and training in the use of artificial members and
0 appliances.

21 “Personal Injury”, the actual bodily harm and includes preg-
22 nancy and mental or nervous shock.

23 *Section 2.* Adding the following new sections in Section Two,
24 after the existing paragraphs: —

25 If the claimant resides out of the Commonwealth, and is a victim
26 of a crime committed within the Commonwealth, the claimant
27 may file for compensation in any District Court in the county
28 where the crime occurred. The District Court where the victim files
29 shall have jurisdiction to determine and award compensation.

30 *Section 3.* Adding the following to Section Three after Subsec-
31 tion (b): —

32 (c) In the case of awards of funeral, burial, or cremation
33 expenses, the exclusion of family members shall not apply if the
34 District Court determines in a particular case that the interests of
35 justice so require.

36 *Section 4.* Striking out the first sentence of paragraph three in
37 Section Four and inserting in place thereof the following sen-
38 tence: — Each claim shall be filed in the office of the Clerk of the
39 District Court in person or by mail.

40 *Section 5.* Striking out the first paragraph of Section Five and
41 inserting in place thereof the following new paragraph: —

42 No compensation shall be paid unless the claimant has incurred
43 an out-of-pocket loss of at least one hundred dollars or has lost
44 two continuous weeks of earnings or support. Out-of-pocket loss
45 shall mean unreimbursed or unreimbursable expenses or indebt-
46 edness reasonably incurred for medical care or other services,
47 including psychiatric or psychological counseling necessitated as a
48 result of the injury upon which such claim is based. Out-of-pocket
49 losses requiring compensation shall include emergency funds for
50 housing but shall not include funds for abortion or funds for
51 counseling for abortion.

52 Adding the following new sentence in Section Five after the last
53 sentence of the fourth paragraph: — Reasonable funeral, burial,
54 and/or cremation expenses, not to exceed two thousand dollars,
55 shall be compensated.

56 Adding the following new sentence in Section Five after the last
57 sentence of the fourth paragraph: —

58 Reasonable funeral, burial, and/or cremation expenses, not to
59 exceed two thousand dollars, shall be compensated.

60 Adding the following new paragraph as paragraph five of
61 Section Five: —

62 When determining the loss of a victim's earnings or support, the
63 following shall be considered:

64 1. If the victim was employed at the time of the injury, loss of
65 actual earnings shall be based upon the victims net salary at the
66 time of the injury.

67 2. If the victim was not employed at the time of the injury or, if
68 as a direct result of the injury, the victim suffered a disability
69 causing a loss of potential earnings, the award may be based upon
70 a sufficient showing by the victim that he or she actually incurred
71 loss of earnings. The amount of the award shall be reduced by any
72 income from substitute work actually performed by the victim or
73 by income the victim would have earned in available appropriate
74 substitute work the victim was capable of performing, but unrea-
75 sonably failed to undertake.

76 3. If the sole employment of the victim at the time of the injury
77 or death, and for the preceding 5 years was limited to performing
78 duties and responsibilities of a homemaker, the award shall be
79 sufficient to ensure that the duties and responsibilities are con-
80 tinued until the victim is able to resume the performance of the
81 duties, or until the cost of services reaches the maximum allowable
82 under section five, whichever is less.

83 *Section 5A.* Adding the following new section Five A:

84 *Emergency Awards*

85 (1) Notwithstanding Section 5, if the District Court determines
86 that an award of compensation will probably be made and that
87 undue hardship will result to the claimant if immediate payment is
88 not made, the District Court may order emergency awards as
89 follows: —

90 (a) An emergency compensation award may not exceed five
91 hundred dollars.

92 (b) An emergency award for funeral and burial expenses may
93 not exceed one thousand dollars (\$1,000).

94 (2) Any award under subsection (1) shall be deducted from the
95 final award made to the claimant. The excess of the amount of
96 such emergency award over the amount of the final award, or the
97 full amount of the emergency award if no final award is made, shall
98 be repaid by the claimant to the Commonwealth.

99 *Section 9.* Adding the following new section nine: —

100 In connection with the victim compensation program, no per-
101 son may: —

102 (a) Submit a fraudulent application or claim for an award;

103 (b) Intentionally make or cause to be made any false statement
104 or representation of a material fact; or

105 (c) Intentionally conceal or fail to disclose information affecting
106 the amount of or the initial or continued right to any such award
107 when reasonably requested to provide such information by the
108 department.

109 (2) Penalties. Any person who violates this section shall be
110 fined not more than \$500 or imprisoned not more than 6 months or
111 both. The person shall further forfeit any benefit received and shall
112 reimburse the state for payments received or paid to or on behalf of
113 the person.

114 (3) Damages. The state has a civil cause of action for relief
115 against any person who violates this section for the amount of
116 damages which the state sustained by reason of the violation and, in
117 addition, or punitive damages not more than double the amount
118 of damages which the state may have sustained, together with
119 interest, and the cost of the suit.

120 (4) Action. The attorney general may bring any action and has
121 such powers as may be necessary to enforce this section.

122 *Section 10.* Adding a new section as follows: —

123 *Section 10.* Report by the Attorney General

124 The office of the Attorney General shall annually prepare and
125 transmit to the Governor and Legislature a public report of its
126 activities under this chapter including: —

127 (1) An explanation of the procedures for filing and processing
128 claims under this chapter.

129 (2) A description of the programs and policies instituted to
130 promote public awareness about crime victim compensation.

131 (3) An analysis of future needs and suggested program improve-
132 ments.

133 (4) A copy of the forms utilized under this chapter.

134 (5) A complete statistical analysis of the cases handled under this
135 chapter including: —

- 136 (a) The number of claims filed.
- 137 (b) A brief description of the facts in each case where compensa-
138 tion is awarded.
- 139 (c) The number of claims approved and the amount of each
140 award.
- 141 (d) The number of claims denied and the reasons for rejection.
- 142 (e) A breakdown of claims by geographic area, month, age and
143 sex of victim, type of crime committed and other relevant facts.
- 144 (f) A summary of cases handled under this chapter.

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DEPARTMENT OF THE HISTORY OF ARTS AND ARCHITECTURE
OFFICE OF THE CURATOR

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