

Act No. 519  
Public Acts of 1996  
Approved by the Governor  
January 12, 1997  
Filed with the Secretary of State  
January 13, 1997

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

**Introduced by Senators Van Regenmorter and Shugars**

# **ENROLLED SENATE BILL No. 1212**

AN ACT to amend the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, and 16 of Act No. 223 of the Public Acts of 1976, entitled "An act to create the crime victims compensation board; to prescribe its powers and duties; to provide compensation to certain victims of crimes; to provide for the promulgation of rules; and to provide for penalties," sections 1 and 5 as amended by Act No. 348 of the Public Acts of 1993, sections 2, 3, 6, 7, and 9 as amended by Act No. 157 of the Public Acts of 1985, sections 4 and 11 as amended by Act No. 316 of the Public Acts of 1990, and section 10 as amended by Act No. 367 of the Public Acts of 1988, being sections 18.351, 18.352, 18.353, 18.354, 18.355, 18.356, 18.357, 18.358, 18.359, 18.360, 18.361, 18.362, 18.363, 18.365, and 18.366 of the Michigan Compiled Laws; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Section 1. The title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, and 16 of Act No. 223 of the Public Acts of 1976, sections 1 and 5 as amended by Act No. 348 of the Public Acts of 1993, sections 2, 3, 6, 7, and 9 as amended by Act No. 157 of the Public Acts of 1985, sections 4 and 11 as amended by Act No. 316 of the Public Acts of 1990, and section 10 as amended by Act No. 367 of the Public Acts of 1988, being sections 18.351, 18.352, 18.353, 18.354, 18.355, 18.356, 18.357, 18.358, 18.359, 18.360, 18.361, 18.362, 18.363, 18.365, and 18.366 of the Michigan Compiled Laws, are amended to read as follows:

## **TITLE**

An act to create an agency concerned with crime victim services; to prescribe its powers and duties; to provide compensation to certain victims of crimes; to provide for the promulgation of rules; and to provide for penalties.

Sec. 1. As used in this act:

(a) "Claimant" means a victim or intervenor who is injured, or any other person eligible for an award under section 4(1) or 5(1), who files a claim under this act.

(b) "Commission" means the crime victim services commission.

(c) "Crime" means an act that is 1 of the following:

(i) A crime under the laws of this state or the United States that causes an injury within this state.

(ii) An act committed in another state that if committed in this state would constitute a crime under the laws of this state or the United States, that causes an injury within this state or that causes an injury to a resident of this state within a state that does not have a victim compensation program eligible for funding from the victims of crime act of 1984, chapter XIV of title II of the comprehensive crime control act of 1984, Public Law 98-473, 98 Stat. 2170.

(iii) An act of international terrorism as defined in section 2331 of title 18 of the United States code, 18 U.S.C. 2331, committed outside the territorial jurisdiction of the United States that causes an injury to a resident of this state.

(d) "Intervenor" means a person who goes to the aid of one who has become a victim of a crime and who suffers personal physical injury.

(e) "Out-of-pocket loss" means the unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for medical care, psychological counseling, replacement services, 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 physical injury" means actual bodily harm and includes pregnancy.

(g) "Replacement services" means homemaking tasks, child care, transportation, and other services previously performed by the victim that, because of the victim's injury, must temporarily or permanently be performed by a person other than the victim.

(h) "Support" means actual monetary payments made by a victim or intervenor to or for a person principally dependent on the victim or intervenor.

(i) "Victim" means a person who suffers a personal physical injury as a direct result of a crime.

Sec. 2. (1) The crime victims compensation board formerly created within the department of management and budget under this section is renamed the crime victim services commission, which shall continue as the successor agency of the board in all respects and for all purposes. Office budget development, procurement, and related management functions shall be performed by the department of management and budget.

(2) Members of the crime victims compensation board shall continue in office as commission members for their unexpired terms. The commission shall consist of 5 members as follows, of whom not more than 3 shall belong to the same political party and who shall be appointed by the governor with the advice and consent of the senate:

(a) One member admitted to the practice of law in this state for not less than 5 years immediately preceding his or her appointment.

(b) One member who is a county prosecuting attorney.

(c) One member who is a peace officer.

(d) One member who is a member of the medical profession.

(e) One member who is a community-based victim advocate.

(3) A member's term of office shall be 3 years, except that of the 2 members appointed to satisfy the expanded membership requirement created by the 1996 amendatory act that amended this section, 1 shall be appointed to serve an initial term of 2 years and the other shall be appointed to serve an initial term of 3 years. 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.

(4) The governor shall designate 1 commission member to serve as chairperson at the governor's pleasure.

(5) The commission members shall be paid on a per diem basis as determined by the legislature.

Sec. 3. (1) The commission shall do all of the following:

(a) Promulgate rules under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, including rules for the approval of attorneys' fees for representation before the commission or before the court of appeals upon judicial review as provided for in section 8.

(b) Obtain from a state or local governmental unit assistance and data to enable the commission to carry out its functions and duties.

(c) Investigate and determine claims for awards and reinvestigate or reopen cases as the commission considers necessary.

(d) Direct medical examination of victims.

(e) Review all appeals, 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 an investigative report relating to the hearing meets the requirements of this section.

(f) Take or cause to be taken affidavits or depositions within or without the state.

(g) Give an annual written report of its activities to the governor and the legislature.

(h) Conduct a program to insure continued public awareness of the provisions of this act in cooperation with state and local agencies.

(i) Monitor, evaluate, and coordinate state and local victim assistance programs.

(j) Administer and provide advice for the disbursement of federal funds available from the victims of crime act of 1984, chapter XIV of the comprehensive crime control act of 1984, title II of Public Law 98-473, 98 Stat. 2170, for the purposes of compensating and assisting crime victims.

(k) Perform the duties required under Act No. 196 of the Public Acts of 1989, being sections 780.901 to 780.911 of the Michigan Compiled Laws.

(2) With the exception of subsection (1)(e), the powers provided in subsection (1) may be delegated by the commission to a member of the commission or its staff.

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, grandparent, child, sibling, or grandchild of a victim of a crime who died as a direct result of the crime.

(c) Any other person dependent for his or her 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 either of the following:

(a) Criminally responsible for the crime.

(b) An accomplice to the crime.

(3) An award shall not be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of \$200.00 or has lost at least 2 continuous weeks' earnings or support, but the commission may waive the limitations of this subsection in the case of a claimant retired by reason of age or disability. If the claimant is a victim of criminal sexual conduct in the first, second, or third degree, the commission may waive the limitations of this subsection.

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 or her parent or guardian.

(2) Except as provided in subsection (3), a claim shall be filed by the claimant not later than 1 year after the occurrence of the crime upon which the claim is based, except as follows:

(a) If police records show that a victim of criminal sexual conduct in the first, second, or third degree was less than 18 years of age at the time of the occurrence and that the victim reported the crime before attaining 19 years of age, a claim based on that crime may be filed not later than 1 year after the crime was reported.

(b) A claim may be filed within 1 year after the discovery by a law enforcement agency that injuries previously determined to be accidental, of unknown origin, or resulting from natural causes, were incurred as the result of a crime.

(3) Upon petition by the claimant and for good cause shown, the commission may extend the period in which a claim may be filed under subsection (2).

(4) A claim shall be filed in the commission's office in person or by mail. The commission shall accept for filing a claim that 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 commission.

(5) Upon filing of a claim, the commission shall promptly notify the prosecuting attorney of the county in which the crime is alleged to have occurred. If, within 20 days after the notification, the prosecuting attorney advises the commission that a criminal prosecution is pending upon the same alleged crime and requests that action by the commission be deferred, the commission shall defer the proceedings until the criminal prosecution is concluded. When the criminal prosecution is concluded, the prosecuting attorney shall promptly notify the commission. This section does not prohibit the commission from granting emergency awards pursuant to section 9.

Sec. 6. (1) When a claim is accepted for filing, an investigation and examination shall be conducted to determine the validity of the claim.

The investigation shall include an examination of papers filed in support of the claim, 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. All claims which arise from the death of an individual as a direct result of a crime shall be considered together, and the total compensation awarded for all claims which arise from the death of an individual shall not exceed the maximum aggregate award.

(2) 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, unless the disposition is a direct result of willful noncooperation by the victim or other claimant with the law enforcement agency or the prosecuting attorney. In the event of determination of willful noncooperation by the victim or other claimant, the commission shall reject the claim.

(3) A claim may be decided on the basis of the papers filed in support of the claim and the report of the investigation of the claim. If the person authorized to decide a claim under section 3(2) is convinced that a decision should not be made without a hearing, that person may request the commission to conduct a hearing under section 7. At the hearing any relevant evidence, not legally privileged, is admissible.

(4) After an examination of the papers filed in support of a claim and the report of investigation, and if no hearing is requested under subsection (3), a decision granting or denying the award shall be made.

(5) A written report setting forth the decision and reasons for the decision shall be sent to the claimant.

Sec. 7. (1) Within 30 days after receipt of the report of the decision, a claimant may apply in writing to the commission for consideration of the decision by the full commission. If a request for a hearing is made by a claimant or pursuant to section 6(3), a hearing shall be ordered.

(2) Within 30 days after the filing of the report, a commission member may apply in writing to the commission for consideration of the decision by the full commission. If a request for a hearing is made by a commission member under this subsection, a hearing shall be ordered.

(3) Upon receiving an application under subsection (1) or (2), the commission shall review the record, and affirm or modify the decision, or hold a hearing, if ordered. The commission's action under this section is final. The commission shall file a written report setting forth its decision and if the decision varies from the report of any original decision it shall set forth its reasons for the decision. If the commission does not receive an application pursuant to subsection (1) or (2), any original decision under section 6 shall become the commission's final decision.

(4) The commission shall within 15 days notify the claimant of the commission's final decision and furnish him or her with a copy of the decision.

Sec. 8. (1) Within 30 days after receiving the copy of the report containing the commission's final decision, the claimant may by leave to appeal commence a proceeding in the court of appeals to review the commission's decision.

(2) A proceeding pursuant to this section shall be commenced by the service of notice upon the commission in person or by mail.

Sec. 9. If it appears 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 commission 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 emergency 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 commission.

Sec. 10. An award shall not be made unless the investigation of the claim verifies the following facts:

(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 either of the following apply:

(i) The crime was criminal sexual conduct committed against a victim who was less than 18 years of age at the time of the occurrence and the crime was reported before the victim attained 19 years of age.

(ii) The commission, for good cause shown, finds the delay was justified.

(d) That the crime did not occur while the victim was confined in a federal, state, or local correctional facility.

Sec. 11. (1) An award made under this act shall be 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) Unless reduced under this act, an award made for loss of earnings or support shall be in an amount equal to the actual loss sustained. An award shall not exceed \$200.00 for each week of lost earnings or support.

(3) An award made for funeral expenses, including burial expenses and grief counseling, shall be not less than \$200.00 or more than \$2,000.00 for each victim. The award may include not more than \$500.00 to reimburse expenses for grief counseling for the victim's spouse, child, parent, or sibling.

(4) An award for psychological counseling shall not exceed 26 hourly sessions per victim or intervenor. The award may include not more than 8 family sessions that include any of the victim's or intervenor's spouse, children, parents, or siblings who are not criminally responsible for or an accomplice to the crime. The maximum hourly reimbursement rate shall not exceed \$80.00 per hourly session for a therapist or counselor licensed or registered to practice in this state,

except that the maximum hourly reimbursement rate shall not exceed \$95.00 per hourly session for a psychologist or physician licensed to practice in this state.

(5) An award shall be reduced by the amount of 1 or more of the following 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 insurance, but not including disability or death benefits paid or to be paid to a peace officer or a corrections 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 or a corrections officer on account of injuries sustained in the course of employment.

(d) From an emergency award under section 9.

(6) The commission shall determine whether the victim's misconduct contributed to his or her injury and shall reduce the amount of the award or reject the claim altogether, in accordance with the determination. The commission may disregard for this purpose the victim's responsibility for his or her own injury if the record shows that the injury was attributable to the victim's efforts to prevent a crime or an attempted crime from occurring in his or her presence or to apprehend a person who had committed a crime in his or her presence. As used in this subsection, "misconduct" includes but is not limited to provocation of or participation in a crime contemporaneous with or immediately preceding the injury.

(7) If the commission 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 he or she is not granted financial assistance, the commission shall deny the award. In determining the serious financial hardship, the commission shall consider all of the financial resources of the claimant.

(8) If the commission determines that the payment of an award will cause substantial unjust enrichment and economic benefit to a person criminally responsible for the crime, the commission shall deny the payment.

Sec. 12. The award shall be paid in a lump sum, except that in the case of death or protracted disability the commission 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 suspension 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.

Sec. 13. The record of a proceeding before the commission is a public record, except that a claimant's file and his or her testimony before the commission is exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. A record or report obtained by the commission, the confidentiality of which is protected by any other law or rule, shall remain confidential.

Sec. 15. For purposes of this act, information relating to the filing of a claim by a claimant before the commission or proceedings before the commission, an emergency award made by the commission pursuant to section 9, or final awards made by the commission pursuant to section 11(2) are inadmissible in a criminal proceeding.

Sec. 16. (1) A person who, with intent to defraud or cheat by falsely presenting the facts and circumstances of a crime to the commission, causes an award of money to be made under this act to any person is guilty of a crime as follows:

(a) If the award is less than \$100.00, a misdemeanor punishable by imprisonment for not more than 3 months or a fine of not more than \$1,000.00, or both.

(b) If the award is \$100.00 or more, a felony punishable by imprisonment for not more than 10 years or 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 for not more than 3 months or a fine of not more than \$1,000.00, or both.

Section 2. Sections 3a and 17 of Act No. 223 of the Public Acts of 1976, being sections 18.353a and 18.367 of the Michigan Compiled Laws, are repealed.

Section 3. This amendatory act shall not take effect unless Senate Bill No. 1213 of the 88th Legislature is enacted into law.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved -----

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Governor.