

SENATE BILL No. 1629

November 12, 2008, Introduced by Senators HARDIMAN, JANSEN, JACOBS, KUIPERS, SCOTT, BIRKHOLZ, KAHN and PATTERSON and referred to the Committee on Judiciary.

A bill to amend 1976 PA 223, entitled

"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,"

by amending sections 2, 4, 5, 10, and 11 (MCL 18.352, 18.354, 18.355, 18.360, and 18.361), as amended by 1996 PA 519, and by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 related management functions shall be performed by the department
2 of ~~management and budget~~ **COMMUNITY HEALTH**.

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

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

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

13 (c) One member who is a peace officer.

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

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

16 (3) A member's term of office shall be 3 years, except that of
17 the 2 members appointed to satisfy the expanded membership
18 requirement created by ~~the 1996 amendatory act that amended this~~
19 ~~section~~ **1996 PA 519**, 1 shall be appointed to serve an initial term
20 of 2 years and the other shall be appointed to serve an initial
21 term of 3 years. A member appointed to fill a vacancy occurring
22 otherwise than by expiration of a term shall be appointed for the
23 remainder of the unexpired term.

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

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

1 Sec. 4. (1) Except as provided in subsection (2), the
2 following persons are eligible for awards:

3 (a) A victim or an intervenor of a crime.

4 (b) A surviving spouse, parent, grandparent, child, sibling,
5 or grandchild of a victim of a crime who died as a direct result of
6 the crime.

7 (c) ~~Any other person dependent for his or her principal~~
8 ~~support upon a victim of a crime who died as a direct result of the~~
9 ~~crime.~~ **A SURVIVING PERSON RELATED TO THE VICTIM BY BLOOD OR**
10 **AFFINITY, A GUARDIAN, EXECUTOR, OR MEMBER OF THE SAME HOUSEHOLD AS**
11 **THE VICTIM.**

12 **(D) A HEALTH CARE PROVIDER SEEKING PAYMENT UNDER SECTION 5A.**

13 (2) A person is not eligible to receive an award if the person
14 is either of the following:

15 (a) Criminally responsible for the crime.

16 (b) An accomplice to the crime.

17 (3) An award shall not be made on a claim unless the claimant
18 has incurred a minimum out-of-pocket loss of \$200.00 or has lost at
19 least 2 continuous weeks' earnings or support, but the commission
20 may waive the limitations of this subsection in the case of a
21 claimant retired by reason of age or disability. If the claimant is
22 a victim of criminal sexual conduct in the first, second, or third
23 degree, the commission may waive the limitations of this
24 subsection. **THE COMMISSION SHALL WAIVE THIS LIMITATION FOR HEALTH**
25 **CARE PROVIDERS SEEKING PAYMENT UNDER SECTION 5A.**

26 Sec. 5. (1) A claim may be filed by the person eligible to
27 receive an award or, if a person is a minor, by his or her parent

1 or guardian.

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

5 (a) If police records show that a victim of criminal sexual
6 conduct in the first, second, or third degree was less than 18
7 years of age at the time of the occurrence and that the victim
8 reported the crime before attaining 19 years of age, a claim based
9 on that crime may be filed **BY A PERSON LISTED IN SECTION 4(1)(A),**
10 **(B), OR (C)** not later than 1 year after the crime was reported.

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

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

18 (4) A claim shall be filed in the commission's office in
19 person or by mail. The commission shall accept for filing a claim
20 that is submitted by a person who is eligible and which alleges the
21 jurisdictional requirements set forth in this act and meets the
22 requirements as to form as approved by the commission.

23 (5) Upon filing of a claim **BY A PERSON LISTED IN SECTION**
24 **4(1)(A), (B), OR (C)**, the commission shall promptly notify the
25 prosecuting attorney of the county in which the crime is alleged to
26 have occurred. If, within 20 days after the notification, the
27 prosecuting attorney advises the commission that a criminal

1 prosecution is pending upon the same alleged crime and requests
2 that action by the commission be deferred, the commission shall
3 defer the proceedings until the criminal prosecution is concluded.
4 When the criminal prosecution is concluded, the prosecuting
5 attorney shall promptly notify the commission. This section does
6 not prohibit the commission from granting emergency awards pursuant
7 to section 9 OR FROM PAYING A HEALTH CARE PROVIDER UNDER SECTION
8 5A.

9 SEC. 5A. (1) A HEALTH CARE PROVIDER IS ONLY ELIGIBLE TO BE
10 PAID FOR A SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION UNDER THIS
11 SECTION IF THAT EXAMINATION INCLUDES ALL OF THE FOLLOWING
12 PROCEDURES:

13 (A) THE COLLECTION OF A MEDICAL HISTORY.

14 (B) A GENERAL MEDICAL EXAMINATION, INCLUDING, BUT NOT LIMITED
15 TO, THE USE OF LABORATORY SERVICES AND THE DISPENSING OF PRESCRIBED
16 PHARMACEUTICAL ITEMS.

17 (C) ONE OR MORE OF THE FOLLOWING:

18 (i) A DETAILED ORAL EXAMINATION.

19 (ii) A DETAILED ANAL EXAMINATION.

20 (iii) A DETAILED GENITAL EXAMINATION.

21 (D) ADMINISTRATION OF A SEXUAL ASSAULT EVIDENCE KIT UNDER
22 SECTION 21527 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
23 333.21527, AND RELATED MEDICAL PROCEDURES AND LABORATORY AND
24 PHARMACOLOGICAL SERVICES.

25 (2) A HEALTH CARE PROVIDER SHALL INFORM THE VICTIM OF A SEXUAL
26 ASSAULT THAT ALL COSTS OF A SEXUAL ASSAULT MEDICAL FORENSIC
27 EXAMINATION SHALL BE PAID BY 1 OF THE SOURCES LISTED IN SUBSECTION

1 (3). A HEALTH CARE PROVIDER SHALL EXPLAIN TO THE VICTIM OF A SEXUAL
2 ASSAULT ALL OF THE AVAILABLE OPTIONS TO PAY THE COSTS OF A SEXUAL
3 ASSAULT MEDICAL FORENSIC EXAMINATION AND SHALL SEEK PAYMENT IN
4 ACCORDANCE WITH THE VICTIM'S PREFERENCE, IF THE VICTIM EXPRESSES A
5 PREFERENCE. IF THE VICTIM DOES NOT OR CANNOT EXPRESS A PREFERENCE,
6 THE HEALTH CARE PROVIDER SHALL ONLY SEEK PAYMENT UNDER SUBSECTION
7 (3) (A) OR (C).

8 (3) A HEALTH CARE PROVIDER SHALL SEEK PAYMENT FOR A SEXUAL
9 ASSAULT MEDICAL FORENSIC EXAMINATION FROM 1 OF THE FOLLOWING
10 SOURCES:

11 (A) THE COMMISSION.

12 (B) THE VICTIM'S INSURANCE CARRIER, IF ANY.

13 (C) ANY OTHER FUNDING SOURCES OTHER THAN THE VICTIM.

14 (4) A HEALTH CARE PROVIDER SHALL NOT DO ANY OF THE FOLLOWING:

15 (A) SEND A BILL TO A VICTIM OF SEXUAL ASSAULT FOR ANY PART OF
16 THE COST OF PERFORMING A SEXUAL ASSAULT MEDICAL FORENSIC
17 EXAMINATION.

18 (B) SUBMIT ANY CLAIM FOR COSTS PAYABLE UNDER THIS SECTION FOR
19 PERFORMING A SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION TO THE
20 VICTIM'S INSURANCE CARRIER IF THE HEALTH CARE PROVIDER IS PAID BY
21 THE COMMISSION.

22 (C) SUBMIT A CLAIM FOR ANY COSTS PAYABLE UNDER THIS SECTION
23 FOR PERFORMING A SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION TO THE
24 COMMISSION FOR PAYMENT IF THE HEALTH CARE PROVIDER IS SEEKING
25 PAYMENT FROM THE VICTIM'S INSURANCE CARRIER.

26 (5) THE COMMISSION SHALL PAY A HEALTH CARE PROVIDER NOT MORE
27 THAN \$1,200.00 FOR THE COST OF PERFORMING A MEDICAL FORENSIC

1 EXAMINATION ON A VICTIM OF SEXUAL ASSAULT, INCLUDING, BUT NOT
2 LIMITED TO, THE COST OF 1 OR MORE OF THE FOLLOWING:

3 (A) USE OF AN EMERGENCY ROOM.

4 (B) USE OF A CLINIC OR OFFICE EXAMINATION ROOM.

5 (C) THE SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION AND
6 RELATED PROCEDURES AND LABORATORY SERVICES.

7 (D) DISPENSING PHARMACEUTICAL ITEMS RELATED TO THE SEXUAL
8 ASSAULT.

9 (6) A CLAIM FOR COMPENSATION UNDER SUBSECTION (5) SHALL BE
10 SUBMITTED TO THE COMMISSION IN A FORM AND IN THE MANNER PRESCRIBED
11 BY THE COMMISSION.

12 (7) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,
13 INFORMATION COLLECTED BY THE COMMISSION UNDER THIS SECTION THAT
14 IDENTIFIES A VICTIM OF SEXUAL ASSAULT IS EXEMPT FROM DISCLOSURE
15 UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 446, MCL 15.231 TO
16 15.246, SHALL NOT BE OBTAINED BY SUBPOENA OR IN DISCOVERY, AND IS
17 INADMISSIBLE AS EVIDENCE IN ANY CIVIL, CRIMINAL, AND ADMINISTRATIVE
18 PROCEEDING. INFORMATION COLLECTED BY THE COMMISSION UNDER THIS
19 SECTION THAT IDENTIFIES A VICTIM OF SEXUAL ASSAULT IS CONFIDENTIAL
20 AND SHALL ONLY BE USED FOR THE PURPOSES EXPRESSLY PROVIDED IN THIS
21 ACT, INCLUDING, BUT NOT LIMITED TO, INVESTIGATING AND PROSECUTING A
22 CIVIL OR CRIMINAL ACTION FOR FRAUD RELATED TO REIMBURSEMENT
23 PROVIDED BY THE COMMISSION UNDER THIS SECTION.

24 (8) A VICTIM OF SEXUAL ASSAULT SHALL NOT BE REQUIRED TO
25 PARTICIPATE IN THE CRIMINAL JUSTICE SYSTEM OR COOPERATE WITH LAW
26 ENFORCEMENT AS A CONDITION OF BEING ADMINISTERED A SEXUAL ASSAULT
27 MEDICAL FORENSIC EXAMINATION. FOR PAYMENTS AUTHORIZED UNDER THIS

SECTION, THE VICTIM'S REQUEST FOR A SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION SATISFIES THE REQUIREMENTS FOR PROMPT LAW ENFORCEMENT REPORTING AND VICTIM COOPERATION UNDER SECTIONS 6 AND 10.

(9) AS USED IN THIS SECTION:

(A) "HEALTH CARE PROVIDER" MEANS ANY OF THE FOLLOWING:

(i) A HEALTH PROFESSIONAL LICENSED OR REGISTERED UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101 TO 333.18838.

(ii) A HEALTH FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20101 TO 333.22260.

(iii) A LOCAL HEALTH DEPARTMENT AS THAT TERM IS DEFINED IN SECTION 1105 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.1105.

(B) "SEXUAL ASSAULT" MEANS A CRIMINAL VIOLATION OF SECTIONS 520A TO 520/ OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO 750.520/.

(C) "SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION" MEANS THAT TERM AS DESCRIBED IN SUBSECTION (1) (A) TO (D).

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~~ **SHALL** not be made ~~where~~ **IF** the police records show that the report was made more than 48 hours after the occurrence of the crime unless ~~either~~ **ANY** of the following **CIRCUMSTANCES** apply:

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

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

7 **(iii) THE COMMISSION IS MAKING A PAYMENT UNDER SECTION 5A.**

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

10 Sec. 11. (1) An award made under this act shall be an amount
11 not more than an out-of-pocket loss, including indebtedness
12 reasonably incurred for medical or other services necessary as a
13 result of the injury upon which the claim is based, together with
14 loss of earnings or support resulting from the injury. The
15 aggregate award under this act shall not exceed \$15,000.00 per
16 claimant.

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

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

26 (4) An award for psychological counseling shall not exceed 26
27 hourly sessions per victim or intervenor. The award may include not

1 more than 8 family sessions that include any of the victim's or
2 intervenor's spouse, children, parents, or siblings who are not
3 criminally responsible for or an accomplice to the crime. The
4 maximum hourly reimbursement rate shall not exceed \$80.00 per
5 hourly session for a therapist or counselor licensed or registered
6 to practice in this state, except that the maximum hourly
7 reimbursement rate shall not exceed \$95.00 per hourly session for a
8 psychologist or physician licensed to practice in this state.

9 (5) An award shall be reduced by the amount of 1 or more of
10 the following payments received or to be received as a result of
11 the injury:

12 (a) From or on behalf of the person who committed the crime.

13 (b) From insurance, but not including disability or death
14 benefits paid or to be paid to a peace officer or a corrections
15 officer on account of injuries sustained in the course of
16 employment.

17 (c) From public funds, but not including disability or death
18 benefits paid or to be paid to a peace officer or a corrections
19 officer on account of injuries sustained in the course of
20 employment.

21 (d) From an emergency award under section 9.

22 (6) ~~The~~ **IN MAKING A DETERMINATION ON A CLAIM FILED BY A PERSON**
23 **LISTED IN SECTION 4(1)(A), (B), OR (C), THE** commission shall
24 determine whether the victim's misconduct contributed to his or her
25 injury and shall reduce the amount of the award or reject the claim
26 altogether, in accordance with the determination. The commission
27 may disregard for this purpose the victim's responsibility for his

1 or her own injury if the record shows that the injury was
2 attributable to the victim's efforts to prevent a crime or an
3 attempted crime from occurring in his or her presence or to
4 apprehend a person who had committed a crime in his or her
5 presence. As used in this subsection, "misconduct" includes but is
6 not limited to provocation of or participation in a crime
7 contemporaneous with or immediately preceding the injury.

8 (7) If the commission finds that the claimant will not suffer
9 serious financial hardship as a result of the loss of earnings or
10 support and the out-of-pocket expenses incurred as a result of the
11 injury if he or she is not granted financial assistance, the
12 commission shall deny the award. In determining the serious
13 financial hardship, the commission shall consider all of the
14 financial resources of the claimant.

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