

No. 139

AN ACT

SB 153

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," creating the Crime Victim's Compensation Board, prescribing its powers and duties, providing for filing, consideration and payments of claims to persons who are victims of crimes, their dependents and survivors, providing for appeals.

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

Section 1. As much as applies to the Department of Justice in section 202, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," amended July 31, 1968 (P.L.754, No.235), is amended to read:

Section 202. Departmental Administrative Boards, Commissions, and Offices.—The following boards, commissions, and offices are hereby placed and made departmental administrative boards, commissions, or offices, as the case may be, in the respective administrative departments mentioned in the preceding section, as follows:

* * *

In the Department of Justice,

Board of Pardons,

Crime Victim's Compensation Board,

Board of Commissioners on Uniform State Laws,

Pennsylvania Crime Commission,

Board of Trustees of State Correctional Institution at Philadelphia,

Board of Trustees of State Correctional Institution at Pittsburgh,

Board of Trustees of State Correctional Institution at Rockview,

Board of Trustees of State Correctional Institution at Graterford,

Board of Trustees of State Correctional Institution at Huntingdon,

Board of Trustees of State Correctional Institution at Camp Hill,

Board of Trustees of State Correctional Institution at Muncy.

* * *

All of the foregoing departmental administrative boards and commissions shall be organized or reorganized as provided in this act.

Section 2. The act is amended by adding sections to read:

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

“Board” means the Crime Victim's Compensation Board.

“Claimant” means the person filing a claim pursuant to this act.

“Crime” means an act committed in Pennsylvania which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or defense, would constitute a crime as defined in and proscribed by Title 18 of the “Pennsylvania Consolidated Statutes,” (relating to crimes and offenses) or other penal law of the Commonwealth: Provided, however, That no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this act unless such injury was intentionally inflicted through the use of a motor vehicle.

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

“Intervenor” shall mean a person who goes to the aid of another and suffers bodily injury or death as a direct result of acting not recklessly to prevent the commission of a crime, or to lawfully apprehend a person reasonably suspected of having committed such crime, or to aid the victim of such crime.

“Out-of-pocket loss” means the unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care and treatment rendered in accordance with a religious method of healing as approved by the board, or other services reasonably necessary as a result of the injury upon which the claim is based and for which the claimant either has paid or is liable. In no case shall property damages or compensation for pain and suffering be included.

“Victim” shall mean a person, other than the alleged offender, who suffers bodily injury or death as a direct result of a crime.

Section 477.1. Crime Victim's Compensation Board.—*(a) There is hereby created a departmental administrative board for the administration of this act, which shall be known as the Crime Victim's Compensation Board. Such board shall consist of three members no more than two of whom shall belong to the same political party, who shall be appointed by the Governor by and with the consent of a majority of the Senate.*

(b) The term of office of each member shall be six years, except that the members first appointed shall serve for terms of six years, four years and two years, respectively. Any member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term.

(c) Each member of the board shall be eligible for reappointment and any member of the board may be removed by the Governor for inefficiency, neglect of duty, or malfeasance in office.

(d) The Governor shall designate one member of the board as chairman thereof, to serve as such at the pleasure of the Governor.

(e) The members of the board shall devote their full time and capacity to their duties. The members of the board shall receive an annual starting salary of twenty-five thousand dollars (\$25,000). Thereafter they shall receive an annual salary to be fixed by the Executive Board of the Commonwealth within the amount made available by appropriation. The chairman shall receive five hundred dollars (\$500) additional compensation per annum.

Section 477.2. Powers and Duties of Board.—The board shall have the following powers and duties:

(a) To establish and maintain a principal office in or near Harrisburg and such other offices within the Commonwealth as it may deem necessary.

(b) To appoint a secretary, counsel, clerks and such other employes and agents as it may deem necessary, fix their compensation within the limits provided by law, and prescribe their duties.

(c) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this act, including rules for the approval of attorney's fees for representation before the board or before the Commonwealth Court upon judicial review as provided for in section 477.7 of this act. Awards of the attorney's fees shall be in addition to awards made to victims. Awards of attorney's fees shall in no case exceed fifteen per centum of the award to the victim or victims. It shall be unlawful for an attorney to contract for or receive any sum larger than the amount allowed.

(d) To request from the Pennsylvania State Police, from any county, municipal or township police departments and agencies and from any other State, municipal or township department or agency, or public authority, and the same are hereby authorized to provide such assistance and data as will enable the board to carry out its function and duties.

(e) To hear and determine all claims for awards filed with the board pursuant to this act, and to reinvestigate or reopen cases as the board deems necessary.

(f) To direct medical examinations of victims.

(g) To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue subpoenas requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this section may be delegated by the board to any member thereof.

(h) To take or cause to be taken affidavits or depositions within or without the State.

(i) To render each year to the Governor and to the General Assembly a written report of its activities. In its third annual report and in every third

annual report thereafter, the board, upon investigation and study, shall include its findings and recommendations with respect to the limits on compensation. The investigation and study shall include but not be limited to an audit by the Auditor General or an independent accounting firm of the amounts paid to each person compensated so as to avoid duplications, other possible errors, or fraud.

(j) To arrange with the heads of other State agencies for the performance of any of its functions under this act with or without reimbursement and, with the approval of the Governor, delegate and authorize the redelegation of any of its powers under this act.

(k) To establish a program to assure extensive and continuing publicity for the provisions relating to compensation under this act, including information on the right to file a claim, the scope of coverage, and procedures to be utilized incident thereto.

Section 477.3. Persons Eligible for Compensation.—(a) Except as provided in subsection (b) of this section, the following persons shall be eligible for compensation:

(1) A victim.

(2) An intervenor.

(3) A surviving spouse, parent or child of a deceased victim or intervenor.

(4) Any other person dependent for his principal support upon a deceased victim or intervenor.

(b) A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person shall not be eligible to receive compensation with respect to such claim. A member of the family of the person who allegedly committed the crime shall not be eligible under any circumstances.

(c) A person who is not a resident of Pennsylvania at the time of occurrence of the crime upon which the claim is based, shall be eligible for compensation only if the law of the state of which he is a resident at the time of occurrence of the crime upon which the claim is based provides for compensation to Pennsylvania residents who are victims of crime in such state.

(d) If the victim's state of residence provides payments to its residents injured in Pennsylvania, primary responsibility for payment to the victim shall rest with the victim's state of residence.

Section 477.4. Filing of Claims for Compensation.—(a) A claim for compensation may be filed by a person eligible for compensation, as provided in section 477.3 of this act, or, if such person is a minor, by his parent or guardian, or if the person entitled to make a claim is mentally incompetent, by his guardian or such other individual authorized to administer his estate.

(b) A claim must be filed not later than one year after the occurrence of the crime upon which the claim is based, or not later than one year after the death of the victim or intervenor: Provided, however, That for good cause

the board may extend the time for filing for a period not exceeding two years after such occurrence.

(c) Claims shall be filed in the office of the secretary of the board or by mail.

(d) Upon filing of a claim pursuant to this act, the board shall promptly notify the district attorney of the county wherein the crime is alleged to have occurred. If, within ten days after such notification, such district attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the board be deferred, the board shall defer all proceedings under this act until such time as a trial verdict has been rendered, and shall so notify such district attorney and claimant. When a trial verdict has been rendered, such district attorney shall promptly so notify the board. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to section 477.8 of this act.

Section 477.5. Minimum Allowable Claim.—No award shall be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars (\$100) or has lost at least two continuous weeks' earnings or support.

Section 477.6. Determination of Claims.—(a) A claim, when accepted for filing, shall be assigned by the chairman to himself or to another member of the board. All claims arising from the death of an individual as a direct result of a single crime, shall be considered together by a single board member.

(b) The board member to whom such claim is assigned shall examine the papers filed in support of the claim and shall thereupon cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court and 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.

(c) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal responsibility or other legal exemption or defense.

(d) The board member to whom a claim is assigned may make his recommendation regarding the claim on the basis of the papers filed in support thereof and the report of the investigation of the claim. If the board member is unable to decide his recommendation upon the basis of the said papers and report, he shall order a hearing. At the hearing any relevant evidence, not legally privileged, shall be admissible.

(e) After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the board member to whom the claim was assigned shall make a recommendation to the entire board either granting an award or denying the claim.

(f) The entire board shall act upon the recommendation of the board member. The board, by majority vote, may affirm, increase, decrease or deny the award. No decision shall be valid unless at least two members are in agreement on the decision.

(g) The secretary of the board shall promptly notify the claimant, the Attorney General and the State Treasurer of the final decision of the board and furnish each with a copy of the report setting forth the decision.

Section 477.7. Judicial Review.—Within thirty days after receipt of a copy of such report containing a final decision of the board, the claimant or the Attorney General may appeal the final decision of the board in the manner provided for appeals from administrative agencies as provided in the act of June 4, 1945 (P.L.1388, No.442), known as the "Administrative Agency Law."

Section 477.8. Emergency Awards.—(a) Notwithstanding the provisions of sections 477.6 and 477.9 of this act, if it appears to the board member to whom a claim is assigned, that such claim is one with respect to which an award probably will be made, and undue hardship will result to the claimant or claimants if immediate payment is not made, such board member may make an emergency award to the claimant or claimants pending a final decision in the case: Provided, however, That the total amount of such emergency award shall not exceed one thousand dollars (\$1,000) per claim, the amount of such emergency award shall be deducted from any final award made to the claimant or claimants, and the excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant or claimants to the board.

(b) The board member to whom a claim was originally assigned may reconsider an emergency award at any time prior to the final decision in the case and increase previous orders for emergency compensation up to the overall limit of one thousand dollars (\$1,000) per claim.

Section 477.9. Awards.—(a) No award shall be made unless the board or board member, as the case may be, finds by a preponderance of the evidence that:

(1) A crime was committed.

(2) The person injured or killed was a victim or intervenor as defined in section 477.

(3) Such crime was promptly reported to the proper authorities; and in no case may an award be made where the record shows that such report was made more than seventy-two hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified. The board, upon finding that any claimant, victim or intervenor has not fully cooperated with all law enforcement agencies, may deny or withdraw any award, as the case may be.

(b) Any award made pursuant to sections 477 to 477.15 shall be in an amount not exceeding out-of-pocket loss, together with loss of past,

present or future earnings or support resulting from such injury. In no case shall the total amount of an award exceed twenty-five thousand dollars (\$25,000).

(c) Any award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this act, be in an amount equal to the actual loss sustained: Provided, however, That no such award shall exceed two hundred dollars (\$200) for each week of lost earnings or support: And, provided further, That the aggregate award for such loss shall not exceed ten thousand dollars (\$10,000) except that in the case of death of a victim or intervenor, the aggregate award shall not exceed fifteen thousand dollars (\$15,000).

(d) If there are two or more persons entitled to an award as a result of the death of a victim or intervenor, the award shall be apportioned among the claimants.

(e) Any award made pursuant to this act shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury (i) from or on behalf of the person who committed the crime, (ii) under any insurance programs including those mandated by law, (iii) under any contract of insurance wherein the claimant is the insured beneficiary, (iv) from public funds, or (v) as an emergency award pursuant to section 477.8 of this act.

(f) In determining the amount of an award, the board or board member, as the case may be, shall determine whether, because of his conduct, the victim or intervenor contributed to the infliction of his injury, and the board or board member shall reduce the amount of the award or deny the claim altogether in accordance with such determination: Provided, however, That the board or board member, as the case may be, may disregard for this purpose the contribution of the intervenor to his own injury where the record shows that such contribution was attributed to efforts by an intervenor as set forth in section 477.

Section 477.10. Manner of Payment.—The award shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. No award made pursuant to this act shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. All awards shall be paid by the State Treasurer. An award shall not be considered as compensation taxable as income under Article III, Personal Income Tax, of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," added August 31, 1971 (P.L.362, No.93). The board shall reconsider, at least annually, every award being paid in installments. The board may reconsider a claim at any time and modify or rescind previous orders for compensation based upon a change in financial circumstances of a victim or one or more of his surviving dependents.

Section 477.11. Confidentiality of Records.—The record of a proceeding before the board or board member shall be a public record: Provided, however, That any record or report obtained by the board or

board member, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

Section 477.12. Subrogation.—Payment of an award made pursuant to this act shall subrogate the Commonwealth, to the extent of such payment, to any right of action accruing to the claimant or the victim the intervenor to recover losses resulting from the crime with respect to which the award is made. In such case, the Commonwealth shall be entitled to bring an action against the person or persons causing the personal injuries or death for which said payment was made.

If an amount greater than that paid pursuant to these provisions is recovered and collected in such action, the Commonwealth shall pay the balance to the claimant. The Attorney General shall enforce any subrogation.

Section 477.13. Restitution.—To the extent that restitution is ordered pursuant to any other existing law, either prior to or subsequent to the making of an award by this board, such restitution shall be paid to the Commonwealth to the extent of the award by the board.

Section 477.14. Penalty.—Any person who asserts a false claim under the provisions of this act shall be guilty of a misdemeanor of the third degree, and shall forfeit any benefit received, and shall reimburse and repay the Commonwealth for payments received or paid on his behalf pursuant to any of the provisions hereof.

Section 477.15. Additional Costs.—Where any person after the effective date of this act pleads guilty or nolo contendere to or is convicted of any crime as herein defined, there shall be imposed as additional costs, the sum of ten dollars (\$10). Such sum shall be paid over to the State Treasurer to be deposited in the General Fund. Under no condition shall a political subdivision be held liable for the payment of this sum of ten dollars (\$10).

Section 3. It is the declared purpose of the General Assembly in this act to promote the public welfare by establishing a means of providing for the financial losses of the innocent victims of crime or their surviving dependents and intervenors acting to prevent the commission of crime or to assist in the apprehension of suspected criminals.

Section 4. This act shall take effect in 120 days, but in no event sooner than July 1, 1976. No claims shall be accepted for crimes which have occurred prior to the effective date of this act.

APPROVED—The 9th day of July, A. D. 1976.

MILTON J. SHAPP