

No. 1984-96

AN ACT

SB 853

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," changing provisions relating to crime victim's compensation; reestablishing and continuing the Crime Victim's Compensation Board; further providing for the Crime Victim's Compensation Fund; changing provisions relating to the rights of victims of crime; making an editorial change; and making an appropriation.

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

Section 1. Section 477 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, amended December 10, 1976 (P.L.1305, No.287) and December 13, 1979 (P.L.519, No.114), is amended 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 enumerated in the act of April 14, 1972 (P.L.233, No.64), known as "*The Controlled Substance, Drug, Device and Cosmetic Act*": 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.

“Local law enforcement agency” means a police department of a city, borough, incorporated town or township.

“Loss of earnings,” in addition to its ordinary meaning, shall mean the loss of the cash equivalent of a social security payment where social security is the primary source of the victim’s income and where the victim is deprived of the money as a direct result of a 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, **including psychological counseling**, 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, **to include expenses for physical examinations and materials used to obtain evidence.** 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 **or the loss of the proceeds of a social security payment which is the primary income of the recipient** as a direct result of a crime.

Section 2. Section 477.2 of the act is amended by adding a subsection to read:

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

* * *

(1) To administer the Crime Victim’s Compensation Fund, created under section 477.15¹, for the payment of claims filed under this act and for all reasonable and necessary administrative expenses.

Section 3. Section 477.3 of the act, added July 9, 1976 (P.L.574, No.139), is amended to read:

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.

(5) Any person related to the victim within the third degree of consanguinity or affinity who assumes the obligation or who pays the funeral or burial expense incurred as a direct result of the crime.

¹ “42 Pa.C.S. § 1725.3 (relating to mandatory costs)” in enrolled bill.

(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]** *if the offender is living in the same household as the victim and will benefit from the award. The Attorney General may sue the offender or the victim or both to recover the award if the offender at any time benefits from the award.*

(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 4. Section 477.9 of the act, added July 9, 1976 (P.L.574, No.139) and amended December 13, 1979 (P.L.519, No.114), is amended to read:

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]** *the provisions of this act* 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)]** *thirty-five thousand dollars (\$35,000)*.

(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)]** *the average weekly wage for all persons covered by the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law," in Pennsylvania as determined annually by the Department of Labor and Industry* 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)]** *fifteen thousand dollars (\$15,000)* except that in the case of death of a victim or intervenor,

the aggregate award shall not exceed [fifteen thousand dollars (\$15,000)] *twenty thousand dollars (\$20,000)*.

(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) Except for [claims involving] *any payments or proceeds that are specifically denominated as compensation for* dismemberment or loss of an eye, 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, *except where the crime was rape in which case the conduct of the victim shall not be considered*, 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 5. The act is amended by adding a section to read:

Section 477.15. Mandatory Costs.—(a) Any person who pleads guilty or nolo contendere or who is convicted of any crime, as defined in section 477 shall, in addition to costs¹ imposed pursuant to 42 Pa.C.S. § 3571(c) (relating to Commonwealth portion of fines, etc.), be sentenced to pay costs of at least fifteen dollars (\$15).

(b) Ten dollars (\$10) shall be paid into a special nonlapsing fund, which is hereby established, for use by the Crime Victim's Compensation Board for payment to victims.

(c) Five dollars (\$5) shall be paid into a special nonlapsing fund, which is hereby established, for use by the Commission on Crime and Delinquency for victim-witness services grants in accordance with this section.

(d) This cost shall be imposed notwithstanding any other provision to this act or other act to the contrary.

(e) The district attorney, the Crime Victim's Compensation Board or any victim of a crime (as defined in section 477) shall have standing to seek a mandamus order requiring the county to collect the costs imposed by this section.

Section 6. Section 477.17 of the act, added December 13, 1979 (P.L.519, No.114), is amended to read:

Section 477.17. Responsibilities of Local Law Enforcement Agencies.—

(a) All local law enforcement agencies shall insure that all of its officers and employes are familiar with crime victim's compensation as provided for

¹ "acts" in enrolled bill.

in sections 477 through 477.17 of this act. Instruction concerning crime victim's compensation shall be made a part of the training curriculum for all trainee officers.

(b) Local law enforcement agencies shall advise the victims of crimes reported to it of the availability of crime victim's compensation as provided by this act. The term "victim" as used in this subsection shall be a victim as defined by this act. The notice required under this subsection shall be in writing and shall include the following paragraph:

"If you have sustained physical injury as a direct result of a crime of violence, or are legally dependent for support upon a person who has sustained physical injury or death as a direct result of a crime of violence, or, in the event of a death caused by a crime of violence, you have legally assumed or voluntarily paid the medical or burial expenses incurred as a direct result thereof, you may qualify for indemnification by the State of Pennsylvania for the out-of-pocket wages, medical or burial expenses which you have incurred as a result of the crime. Claims must be filed with the Crime Victim's Compensation Board for the State of Pennsylvania. For further information regarding this program, please contact:

(Name, business address and telephone
number of the local law enforcement
agency)

or

Crime Victim's Compensation Board
[Department of Justice]
Office of General Counsel
Harrisburg, Pennsylvania

Important: The statute provides that, absent certain extenuating circumstances, a claimant has one year from the date of the crime to file his claim with the Crime Victim's Compensation Board."

(c) The written notification provided for in subsection (b) shall be accompanied by **[three copies]** *one copy* of the application form for crime victim's compensation. These forms shall be supplied by the Crime Victim's Compensation Board to all local law enforcement agencies. The record of the date and address of all letters of notification shall be maintained by every local law enforcement agency.

(d) Any officer of a local law enforcement agency whose duties include the investigation of crimes may notify victims or their families of the availability of compensation under this act by giving them a card or sheet bearing the paragraph as quoted in subsection (b) above. A record of such personal notice shall be maintained by the local law enforcement agency.

(e) In municipalities which do not have a local law enforcement agency, the board shall by rule establish procedures whereby it, together with the State Police, shall give the notice to victims of crimes as provided in this section.

Section 7. Section 477.18 of the act, added December 14, 1982 (P.L.1213, No.280), is amended to read:

Section 477.18. Distribution of Moneys Received as a Result of the Commission of Crime.—(a) Every person, contracting with any person or the representative or assignee of any person[,], accused *or convicted* of a crime in this Commonwealth, with respect to the reenactment of such crime, by way of a movie, book, magazine article, *tape recording, phonograph record*, radio or television presentation, live entertainment of any kind, or from the expression of [such] *the accused or convicted* person's thoughts, feelings, opinions or emotions regarding such crime, *shall notify the board of the contractual arrangements and* shall pay over to the board any moneys which would otherwise, by terms of such contract, be owing to the person so *accused or convicted* or his representatives. The board shall deposit such moneys in an escrow account for the benefit of and payable to any [victim of crimes committed by such person, provided that such person is eventually convicted of the crime] *eligible person* and provided [further] that such [victim] *eligible person*, within five years of the date of the [crime] *establishment of such escrow account*, brings a civil action for damages on any legal theory in a court of competent jurisdiction and recovers a money judgment against such *accused or convicted* person or his representatives[.]

(b) *The] and provided further that, in the case of an accused person, such person is eventually convicted. However, the accused or convicted person may voluntarily request that the board make payments to eligible persons who have not recovered money judgments. In the case of an accused making such a voluntary request, no payment shall be made until such person is convicted and, upon conviction, the trial judge presiding over the case shall determine the proportions of available escrow moneys payable to each eligible person and shall certify those amounts to the board. In the case of a convicted person making such a voluntary request, the board shall determine the proportion of available escrow moneys payable to eligible persons.*

(b) (1) *As used in this section, the term "eligible person" shall include any of the following persons:*

(i) *A victim of the particular crime in question.*

(ii) *An intervenor in such crime.*

(iii) *A surviving spouse, parent or child of a deceased victim of, or intervenor in, such crime.*

(iv) *Any other person dependent for his principal support upon a deceased victim of, or intervenor in, such crime.*

No person who is criminally responsible for the crime in question or was an accomplice of the person who is criminally responsible shall be an eligible person.

(2) *As used in this section, the term "convicted" includes conviction by entry of a plea of guilty or nolo contendere, conviction after trial, and a finding of not guilty due to insanity or of guilty but mentally ill.*

(c) *Upon receiving escrow moneys, the board shall notify all eligible persons that the escrow money is available to satisfy money judgments or that the accused or convicted has voluntarily requested that payments be made in the absence of a money judgment. If, after a good faith effort, the board is unable to give personal notice to each such eligible person, the*

board, at least once every six months for five years from the date it receives such moneys, shall cause to have published a legal notice in newspapers of general circulation in each county advising such **[victims] eligible persons** that such escrow moneys are available to satisfy money judgments pursuant to this section *or that the accused or convicted has voluntarily requested that payments be made in the absence of a money judgment.*

[(c)] (d) Upon disposition of charges favorable to any person accused of committing a crime, or upon a showing by such person that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such person pursuant to this section, the board shall immediately pay over any moneys in the escrow account to such person.

[(d)] (e) Notwithstanding any inconsistent provision of law and rules of civil procedure with respect to the timely bringing of an action, the five-year period provided for in subsection (a) shall not begin to run until an escrow account has been established.

[(e) Notwithstanding the foregoing provisions of this section,]

(f) No payment to eligible persons shall be made from the escrow account without official certification by the trial judge that the criminal charges have been adjudicated finally, including the disposition of any appeal. However, the board shall make payments from an escrow account to **[any person accused of crime] an accused person prior to final adjudication of the criminal charges** upon the order of a court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the proceedings against such person, including the appeals process. *The amount authorized for attorneys' fees, expert witnesses and other costs of litigation shall be approved and certified to the board by the judge presiding at the trial of the accused.*

[(f)] (g) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this Commonwealth.

Section 8. The act is amended by adding sections to read:

Section 479. Legislative Intent.—In recognition of the civic and moral duty of victims of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies and in further recognition of the continuing importance of victim cooperation to State and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this Commonwealth, the General Assembly declares its intent, in this section, to ensure that all victims of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in sections¹ 479.1 through 479.5 to victims of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants.

Section 479.1. Definitions.—The following words and phrases when used in sections 479 through 479.5 shall have the meanings given to them in this section unless the context clearly indicates otherwise:

¹ "in this sections" in enrolled bill.

“Commission” means the Pennsylvania Commission on Crime and Delinquency.

“Crime” means an act committed in this Commonwealth 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 enumerated in the act of April 14, 1972 (P.L.233, No.64), known as “The Controlled Substance, Drug, Device and Cosmetic Act.” No act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this act unless the injury was intentionally inflicted through the use of a motor vehicle.

“Family” means when used in reference to a person:

(1) anyone related to that person within the third degree of consanguinity or affinity;

(2) anyone maintaining a common-law relationship with that person; or

(3) anyone residing in the same household with that person.

“Feloniously assaultive crime” means an act committed in this Commonwealth which, if it had been committed by a mentally competent, criminally responsible adult who had no legal exemption or defense, would constitute a felony as defined in and proscribed by Chapter 25, 27, 29, 31 or 37 of Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses). No act involving the operation of a motor vehicle which results in injury shall constitute a feloniously assaultive crime for the purpose of this act unless the injury was intentionally inflicted through the use of a motor vehicle.

“Victim” means a person against whom a crime is being or has been perpetrated or attempted.

Section 479.2. Eligibility of Victims.—A victim has the rights and is eligible for the services under sections 479.3 and 479.4 only if the victim reported the crime to law enforcement authorities without unreasonable delay after its occurrence or discovery, unless the victim had a reasonable excuse not to do so.

Section 479.3. Basic Bill of Rights for Victims.—Victims of crime have the following rights:

(1) To have included in any presentence report information concerning the effect that the crime committed by the defendant has had upon the victim, including any physical or psychological harm or financial loss suffered by the victim, to the extent that such information is available from the victim or other sources.

(2) To have restitution ordered as a condition of probation whenever feasible.

(3) Upon request of the victim of a feloniously assaultive crime, to be promptly informed by the district attorney whenever the assailant is to be released on parole, furlough or any other form of supervised or unsupervised release from full incarceration.

Section 479.4. Establishment of Basic Services for Victims of Crime.—The commission shall provide technical assistance to and make grants to district attorneys and other criminal justice agencies which provide crime victims with the following services:

(1) *Notification services, including: (i) information concerning financial assistance and other social services available as a result of being a victim of crime, (ii) notification that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the victim an unnecessary trip to court, and (iii) notification of the final disposition of the case.*

(2) *Protection services, including: (i) protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and (ii) a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families and friends of defendants.*

(3) *Procedures for the expedited return by law enforcement officials of that personal property of victims which is held for prosecutorial purposes.*

(4) *Services related to the rights of victims under section 479.3.*

(5) *Other services as defined by the commission.*

Section 479.5. Grant Program for Services.—(a) *The commission shall have the authority to make grants to district attorneys and other criminal justice agencies for the provision of the services under section 479.4.*

(b) *The commission shall promulgate such guidelines and regulations as are necessary to ensure the cost-effective delivery of victim services or victim and witness services consistent with section 479.4.*

(c) *In determining grant awards, the commission shall promote broad-based participation by a maximum number of criminal justice agencies State-wide.*

(d) *All agencies which make application for awards under this section shall provide such data in support of their request as the commission shall require. Those agencies which receive awards shall provide the commission with such reports as the commission may determine are necessary to assess the agency's progress in the development of victim services.*

(e) *The commission shall submit an annual report to the General Assembly on the progress of services provided for in section 479.4. The report shall include:*

(1) *The number of participating agencies and population served.*

(2) *The extent of services provided.*

(3) *Any impediments to the progress of the program.*

(4) *Recommendations for reform.*

Section 9. Sections 1 through 7¹ of this act shall constitute the legislation required to reestablish and continue an agency pursuant to the requirements and provisions of the act of December 22, 1981 (P.L. 508, No. 142), known as the Sunset Act. The Crime Victim's Compensation Board is hereby reestablished and continued until December 31, 1986.

Section 10. The presently confirmed members of the existing board, as of June 30, 1984, shall continue to serve as board members until their present terms expire.

Section 11. Each rule and regulation of the board in effect on June 30, 1984, shall remain in effect after such date until repealed or amended by the board².

¹ "9" in enrolled bill.

² "commission" in enrolled bill.

Section 12. The sum of \$500,000 is appropriated to the Pennsylvania Commission on Crime and Delinquency for the fiscal year July 1, 1984, to June 30, 1985, to carry out the provisions of section 8¹ of this act relating to victim services.

Section 13. Section 3571(d) of Title 42 is repealed insofar as it imposes costs in addition to the costs provided for in section 477.15 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 14. Section 5² of this act applies³ to crimes committed after the effective date.

Section 15. The provisions of sections 1 and 4⁴ of this act shall apply to claims arising out of crimes committed on or after the effective date of this act.

Section 16. This act shall take effect immediately.

APPROVED—The 30th day of June, A. D. 1984.

DICK THORNBURGH

¹ "10" in enrolled bill.

² "7" in enrolled bill.

³ "apply" in enrolled bill.

⁴ "5" in enrolled bill.