

## Committee Substitute for House Bill No. 1779

An act relating to victim assistance and compensation; amending s. 960.001, F.S.; providing for the assertion of a victim's rights as provided by law or the State Constitution; amending s. 960.03, F.S.; providing definitions; amending s. 960.05, F.S.; prescribing the purposes of the Crime Victims' Services Office in the Department of Legal Affairs; amending s. 960.065, F.S.; prescribing eligibility criteria for awards granted under ch. 960, F.S.; amending s. 960.12, F.S.; increasing the maximum amount of an emergency award; providing an additional criteria for the denial of an award; amending s. 960.13, F.S.; prescribing criteria applicable to awards; allowing the department to establish, by rule, maximum award amounts that are lower than the statutory maximums; amending s. 960.14, F.S.; specifying the circumstances in which the department may modify or rescind previous awards for victim compensation; creating s. 960.198, F.S.; allowing the department to award to a victim of domestic violence a sum of money which the victim may use for relocating; providing maximum amounts of such awards; providing prerequisites; amending s. 960.28, F.S.; increasing the limit on payment for victims' examination expenses by the office; amending s. 960.045, F.S.; authorizing the Department of Legal Affairs to perform and criminal history check on certain victims or other claimants; establishing criteria governing certain awards; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (7) and (8) of section 960.001, Florida Statutes, 1998 Supplement, are renumbered as subsections (8) and (9), respectively, and a new subsection (7) is added to said section to read:

960.001 Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.—

(7) The victim of a crime and the state attorney, with the consent of the victim, have standing to assert the rights of a crime victim which are provided by law or s. 16(b), Art. I of the State Constitution.

Section 2. Section 960.03, Florida Statutes, 1998 Supplement, is amended to read:

960.03 Definitions.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(1) "Catastrophic injury" means a permanent impairment constituted by:

(a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;

(b) Amputation of an arm, a hand, a foot, or a leg;

(c) Severe brain or closed-head injury as evidenced by:

1. Severe sensory or motor disturbances;
2. Severe communication disturbances;
3. Severe complex integrated disturbances of cerebral function;
4. Severe episodic neurological disorders; or
5. Other severe brain and closed-head injury conditions at least as severe in nature as any condition described in subparagraphs 1.-4.;

(d) Second-degree or third-degree burns on 25 percent or more of the total body surface or third-degree burns on 5 percent or more of the face and hands;

(e) Total or industrial blindness; or

(f) Any other injury that would otherwise qualify under this chapter and that is of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the Federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.

(2)(4) "Claimant" means the person on whose behalf an award is sought.

(2) "Department" means the Department of Legal Affairs.

(3) "Crime" means:

(a) A felony or misdemeanor offense committed by either an adult or a juvenile which results in physical injury or death. The term also includes any such criminal act which is committed within this state but which falls exclusively within federal jurisdiction.

(b) A violation of s. 316.193, s. 316.027(1), s. 327.35(1), or s. 782.071(2), or s. 860.13(1)(a) which results in physical injury or death; however, no other act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death shall constitute a crime for the purpose of this chapter unless the injury or death was intentionally inflicted through the use of such vehicle, boat, or aircraft or unless such vehicle, boat, or aircraft is an implement of a crime to which this act applies.

(c) A criminal act committed outside of this state against a resident of this state which ~~that~~ would have been compensable if it had occurred in this state and which ~~that~~ occurred in a state that does not have an eligible crime victim compensation program as the term is defined in the federal Victims of Crime Act of 1984.

(d) An act of mass violence or an act of international terrorism, as defined in 18 U.S.C. s. 2331, which ~~that~~ is committed outside of the territorial boundaries of the United States upon a resident of this state, when such act

results in physical injury or death and the person is not eligible for compensation under Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(4) “Crime Victims’ Services Office” means the former Bureau of Crimes Compensation and Victim and Witness Services, now the Crime Victims’ Services Office of the Department of Legal Affairs.

(5) “Department” means the Department of Legal Affairs.

~~(6)~~(5) “Disabled adult” means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

~~(7)~~(6) “Elderly person” means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for his or her own care or protection is impaired.

~~(8)~~(7) “Hearing officer” means a hearing officer designated by the Attorney General.

~~(9)~~(8) “Intervenor” means any 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, to lawfully apprehend a person reasonably suspected of having committed a crime, or to aid the victim of a crime.

~~(9)~~ —“Victim” means:

~~(a) A person who suffers personal physical injury or death as a direct result of a crime; or~~

~~(b) A person less than 16 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured.~~

(10) “Out-of-pocket loss” means unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care, psychological counseling, or other treatment rendered in accordance with a religious method of healing or for other services necessary as a result of the injury or death upon which such claim is based.

(11) “Property loss” means the loss of tangible personal property directly caused by a criminal or delinquent act of another.

(12) “Treatment” means:

(a) Medical, dental, psychological, mental health, chiropractic, or physical rehabilitation services;

(b) Nonmedical remedial care; or

(c) Other treatment rendered in accordance with a religious method of healing.

(13) “Victim” means:

(a) A person who suffers personal physical injury or death as a direct result of a crime;

(b) A person less than 16 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime, but who was not physically injured; or

(c) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.

Section 3. Paragraphs (k) and (m) of subsection (2) of section 960.05, Florida Statutes, are amended to read:

960.05 Crime Victims’ Services Office.—

(2) The Crime Victims’ Services Office is established for the following purposes:

(k) To receive request from the state attorney or from the law enforcement agencies involved such investigation and data, including confidential records, as will enable the department to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his or her own injury or death.

(m) To require the submission of such ~~medical~~ records as are required and, when necessary, to direct medical examination of the victim or intervenor.

Section 4. Section 960.065, Florida Statutes, is amended to read:

960.065 Eligibility for awards.—

(1) Except as provided in subsection (2), the following persons shall be eligible for awards pursuant to this chapter:

(a) A victim.

(b) An intervenor.

(c) A surviving spouse, parent or guardian, sibling, or child of a deceased victim or intervenor.

(d) Any other person who is dependent for his or her principal support upon a deceased victim or intervenor.

(2) Any claim filed by or on behalf of a person who:

(a) Committed or aided in the commission of the crime upon which the claim for compensation was based; ~~or~~

(b) Was engaged in an unlawful activity at the time of the crime upon which the claim for compensation is based;

(c) Was in custody or confined, regardless of conviction, in a county or municipal detention facility, a state or federal correctional facility, or a juvenile detention or commitment facility at the time of the crime upon which the claim for compensation is based;

(d) Has been adjudicated as a habitual felony offender, habitual violent offender, or violent career criminal under s. 785.084; or

(e) Has been adjudicated guilty of a forcible felony offense as described in s. 776.08,

shall not be eligible ~~for to receive an award with respect to such claim.~~

(3) Any claim filed by or on behalf of a person who was in custody or confined, regardless of adjudication, in a county or municipal facility, a state or federal correctional facility, or a juvenile detention, commitment, or assessment facility at the time of the crime upon which the claim is based, who has been adjudicated as a habitual felony offender under s. 775.084, or who has been adjudicated guilty of a forcible felony offense as described in s. 776.08, shall not be eligible for an award. Notwithstanding the foregoing, upon a finding by the Crime Victims' Services Office of the existence of mitigating or special circumstances that would render such a disqualification unjust, an award may be approved. A decision that mitigating or special circumstances do not exist in a case subject to this section shall not constitute final agency action subject to review pursuant to ss. 120.569 and 120.57.

~~(4)(3)~~—No Payment ~~may not shall~~ be made under this chapter if the person who committed the crime upon which the claim is based will receive any direct or indirect financial benefit from such payment, unless such benefit is minimal or inconsequential. Payment ~~may shall~~ not be denied based on the victim's familial relationship to the offender or based upon the sharing of a residence by the victim and offender, except to prevent unjust enrichment of the offender.

Section 5. Section 960.12, Florida Statutes, is amended to read:

960.12 Emergency awards.—~~Notwithstanding the provisions of s. 960.07, if it appears to the department that such claim is one with respect to which an award probably will be made, and that either the claimant is a recipient of benefits under the Federal Social Security Act or undue hardship will result to the claimant if immediate payment is not made, the department may make an emergency award to the claimant, pending a final decision in the case, on the following conditions:~~

(1) The amount of such emergency award ~~may shall~~ not exceed \$1,000 ~~\$500~~;

(2) The amount of such emergency award shall be deducted from any final award made to the claimant; and

(3) The amount of such emergency award which is in excess of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the department.

(4) The claimant has not been adjudicated guilty of a forcible felony, as verified through a criminal history records check performed through the Florida Crime Information Center system pursuant to s. 960.045.

Section 6. Paragraph (b) of subsection (1) and subsections (6) and (9) of section 960.13, Florida Statutes, are amended to read:

960.13 Awards.—

(1)

(b) In no case may an award be made when the record shows that such report was made more than 72 hours after the occurrence of such crime unless the department, for good cause shown, finds the delay to have been justified. The department, upon finding that any claimant or award recipient has not duly cooperated with the state attorney, all law enforcement agencies, and the department, may deny, reduce, or withdraw any award, as the case may be.

(6) Any award made pursuant to this chapter, except an award for loss of support, shall be reduced by the amount of any payments or services received or to be received by the claimant as a result of the injury or death:

(a) From or on behalf of the person who committed the crime; provided, however, that a restitution award ordered by a court to be paid to the claimant by the person who committed the crime shall not reduce any award made pursuant to this chapter unless it appears to the department that the claimant will be unjustly enriched thereby.

(b) From any other public or private source or provider, including, but not limited to, an award of workers' compensation pursuant to chapter 440.

(c) From agencies mandated by other Florida statutes to provide or pay for services, except as provided in s. 960.28.

(d) From an emergency award under s. 960.12.

(9)(a) An award may not exceed:

1. Ten thousand dollars for treatment;

2. Ten thousand dollars for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;

3. A total of \$25,000 for all compensable costs; or

4. Fifty thousand dollars when the department makes a written finding that the victim has suffered a catastrophic injury as a direct result of the crime.

~~(b) The department may adopt rules that establish limits below the amounts set forth in paragraph (a) and establish criteria governing awards for catastrophic injury, a total of \$15,000 for all compensable cost or losses. However, awards for treatment may not exceed \$10,000. The department may, by rule adopted pursuant to chapter 120, establish limits below \$15,000 for awards for particular types of costs or losses. Any application filed on or after October 1, 1996, shall be governed under this section.~~

~~(b) A minor victim may receive continuing or periodic mental health care necessitated by the adverse impact of victimization upon normal emotional development, up to the maximum award of \$10,000. After approval of the initial application for an award to a minor victim, the minor victim or the minor victim's legal guardian may submit supplemental requests for additional victimization treatment as necessary.~~

Section 7. Subsection (3) of section 960.14, Florida Statutes, is amended to read:

960.14 Manner of payment; execution or attachment.—

(3) The department may reconsider a claim at any time and modify or rescind previous orders for compensation, based upon a change in medical circumstances of a victim or intervenor.

Section 8. Section 960.198, Florida Statutes, is created to read:

960.198 Relocation assistance for victims of domestic violence.—

(1) Notwithstanding the criteria set forth in s. 960.13 for crime victim compensation awards, the department may award a one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment.

(2) In order for an award to be granted to a victim for relocation assistance:

(a) There must be proof that a domestic violence offense was committed;

(b) The domestic violence offense must be reported to the proper authorities;

(c) The victim's need for assistance must be certified by a certified domestic violence center in this state; and

(d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

Section 9. Subsection (2) of section 960.28, Florida Statutes, is amended to read:

960.28 Payment for victims' initial forensic physical examinations.—

(2) The Crime Victims' Services Office of the department shall pay for medical expenses connected with an initial forensic physical examination of a victim who reports a violation of chapter 794 or chapter 800 to a law enforcement officer. Such payment shall be made regardless of whether or not the victim is covered by health or disability insurance. The payment shall be made only out of moneys allocated to the Crime Victims' Services Office for the purposes of this section, and the payment may not exceed \$250 \$150 with respect to any violation. Payment may not be made for an initial forensic physical examination unless the law enforcement officer certifies in writing that the initial forensic physical examination is needed to aid in the investigation of an alleged sexual offense and that the claimant is the alleged victim of the offense. The department shall develop and maintain separate protocols for the initial forensic physical examination of adults and children. Payment under this section is limited to medical expenses connected with the initial forensic physical examination, and payment may be made to a medical provider using an examiner qualified under chapter 464, excluding s. 464.003(5); chapter 458; or chapter 459. Payment made to the medical provider by the department shall be considered by the provider as payment in full for the initial forensic physical examination associated with the collection of evidence. The victim may not be required to pay, directly or indirectly, the cost of an initial forensic physical examination performed in accordance with this section.

Section 10. Subsections (3) and (4) are added to section 960.045, Florida Statutes, 1998 Supplement, to read:

960.045 Department of Legal Affairs; powers and duties.—It shall be the duty of the department to assist persons who are victims of crime.

(3) The department shall have a criminal history record check performed through the Florida Crime Information Center system on any victim or other claimant on whose behalf an award is sought under ss. 960.01-960.28.

(4) Establish criteria governing awards for catastrophic injury as a direct result of a crime.

Section 11. This act shall take effect January 1, 2000, except that section 1 of this act shall take effect upon becoming a law.

Approved by the Governor June 17, 1999.

Filed in Office Secretary of State June 17, 1999.