

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 401
92ND GENERAL ASSEMBLY

Reported from the Committee on Judiciary April 15, 2003, with recommendation that the House Committee Substitute for Senate Bill No. 401 Do Pass by Consent.

STEPHEN S. DAVIS, Chief Clerk

1175L.03C

AN ACT

To repeal sections 595.010 and 595.045, RSMo, and to enact in lieu thereof two new sections relating to crime victim compensation, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 595.010 and 595.045, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 595.010 and 595.045, to read as follows:

595.010. 1. As used in sections 595.010 to 595.075, unless the context requires otherwise, the following terms shall mean:

(1) "Child", a dependent, unmarried person who is under eighteen years of age and includes a posthumous child, stepchild, or an adopted child;

(2) "Claimant", a victim or a dependent, relative, survivor, or member of the family, of a victim eligible for compensation pursuant to sections 595.010 to 595.075;

(3) "Conservator", a person or corporation appointed by a court to have the care and custody of the estate of a minor or a disabled person, including a limited conservator;

(4) "Counseling", problem-solving and support concerning emotional issues that result from criminal victimization licensed pursuant to section 595.030. Counseling is a confidential service provided either on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person's sense of well-being and social functioning after victimization. Counseling does not include victim advocacy services such as crisis

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

telephone counseling, attendance at medical procedures, law enforcement interviews or criminal justice proceedings;

(5) "Crime", an act committed in this state which, if committed by a mentally competent, criminally responsible person who had no legal exemption or defense, would constitute a crime; provided that, such act involves the application of force or violence or the threat of force or violence by the offender upon the victim but shall include the crime of driving while intoxicated, vehicular manslaughter and hit and run; and provided, further, that no act involving the operation of a motor vehicle except driving while intoxicated, vehicular manslaughter and hit and run which results in injury to another shall constitute a crime for the purpose of sections 595.010 to 595.075, unless such injury was intentionally inflicted through the use of a motor vehicle. A crime shall also include an act of terrorism, as defined in 18 U.S.C. section 2331, which has been committed outside of the United States against a resident of Missouri. **For the purposes of this chapter, but only for the purposes of this chapter, a crime occurs at the time of the commission or attempted commission of the crime ;**

(6) "Crisis intervention counseling", helping to reduce psychological trauma where victimization occurs;

(7) "Department", the department of public safety;

(8) "Dependent", mother, father, spouse, spouse's mother, spouse's father, child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly or partially dependent for support upon, and living with, but shall include children entitled to child support but not living with, the victim at the time of his injury or death due to a crime alleged in a claim pursuant to sections 595.010 to 595.070;

(9) "Direct service", providing physical services to a victim of crime including, but not limited to, transportation, funeral arrangements, child care, emergency food, clothing, shelter, notification and information;

(10) "Director", the director of public safety of this state or a person designated by him for the purposes of sections 595.010 to 595.070;

(11) "Disabled person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his financial resources, including a partially disabled person who lacks the ability, in part, to manage his financial resources;

(12) "Division", the division of workers' compensation of the state of Missouri;

(13) "Emergency service", those services provided within thirty days to alleviate the immediate effects of the criminal act or offense, and may include cash grants of not more than one hundred dollars;

(14) "Earnings", net income or net wages;

(15) "Family", the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent, or spouse's parents;

(16) "Funeral expenses", the expenses of the funeral, burial, cremation or other chosen method of interment, including plot or tomb and other necessary incidents to the disposition of the remains;

(17) "Gainful employment", engaging on a regular and continuous basis, up to the date of the incident upon which the claim is based, in a lawful activity from which a person derives a livelihood;

(18) "Guardian", one appointed by a court to have the care and custody of the person of a minor or of an incapacitated person, including a limited guardian;

(19) "Hit and run", the crime of leaving the scene of a motor vehicle accident as defined in section 577.060, RSMo;

(20) "Incapacitated person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur, including a partially incapacitated person who lacks the capacity to meet, in part, such essential requirements;

(21) "Injured victim", a person:

(a) Killed or receiving a personal physical injury in this state as a result of another person's commission of or attempt to commit any crime;

(b) Killed or receiving a personal physical injury in this state while in a good faith attempt to assist a person against whom a crime is being perpetrated or attempted;

(c) Killed or receiving a personal physical injury in this state while assisting a law enforcement officer in the apprehension of a person who the officer has reason to believe has perpetrated or attempted a crime;

(22) "Law enforcement official", a sheriff and his regular deputies, municipal police officer or member of the Missouri state highway patrol and such other persons as may be designated by law as peace officers;

(23) "Offender", a person who commits a crime;

(24) "Personal physical injury", actual bodily harm only with respect to the victim. Personal physical injury may include mental or nervous shock resulting from the specific incident upon which the claim is based;

(25) "Private agency", a not-for-profit corporation, in good standing in this state, which provides services to victims of crime and their dependents;

(26) "Public agency", a part of any local or state government organization which

provides services to victims of crime;

(27) "Relative", the spouse of the victim or a person related to the victim within the third degree of consanguinity or affinity as calculated according to civil law;

(28) "Survivor", the spouse, parent, legal guardian, grandparent, sibling or child of the deceased victim of the victim's household at the time of the crime;

(29) "Victim", a person who suffers personal physical injury or death as a direct result of a crime, as defined in subdivision (5) of this subsection;

(30) "Victim advocacy", assisting the victim of a crime and his dependents to acquire services from existing community resources.

2. As used in sections 565.024 and 565.060, RSMo, and sections 595.010 to 595.075, the term "alcohol-related traffic offense" means those offenses defined by sections 577.001, 577.010, and 577.012, RSMo, and any county or municipal ordinance which prohibits operation of a motor vehicle while under the influence of alcohol.

595.045. 1. There is established in the state treasury the "Crime Victims' Compensation Fund". A surcharge of seven dollars and fifty cents shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of criminal or traffic laws of the state, including an infraction and violation of a municipal ordinance; except that no such fee shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county, or municipality. A surcharge of seven dollars and fifty cents shall be assessed as costs in a juvenile court proceeding in which a child is found by the court to come within the applicable provisions of subdivision (3) of subsection 1 of section 211.031, RSMo.

2. Notwithstanding any other provision of law to the contrary, the moneys collected by clerks of the courts pursuant to the provisions of subsection 1 of this section shall be collected and disbursed in accordance with sections 488.010 to 488.020, RSMo, and shall be payable to the director of the department of revenue.

3. The director of revenue shall deposit annually the amount of [two] **five** hundred [fifty] thousand dollars to the state forensic laboratory account administered by the department of public safety to provide financial assistance to defray expenses of crime laboratories if such analytical laboratories are registered with the federal Drug Enforcement Agency or the Missouri department of health and senior services. Subject to appropriations made therefor, such funds shall be distributed by the department of public safety to the crime laboratories serving the courts of this state making analysis of a controlled substance or analysis of blood, breath or urine in relation to a court proceeding.

4. The remaining funds collected under subsection 1 of this section shall be denoted

to the payment of an annual appropriation for the administrative and operational costs of the office for victims of crime and, if a statewide automated crime victim notification system is established pursuant to section 650.310, RSMo, to the monthly payment of expenditures actually incurred in the operation of such system. Additional remaining funds shall be subject to the following provisions:

(1) On the first of every month, the director of revenue or the director's designee shall determine the balance of the funds in the crime victims' compensation fund available to satisfy the amount of compensation payable pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

(2) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available exceeds one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit fifty percent to the credit of the crime victims' compensation fund and fifty percent to the services to victims' fund established in section 595.100;

(3) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available is less than one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit seventy-five percent to the credit of the crime victims' compensation fund and twenty-five percent to the services to victims' fund established in section 595.100.

5. The director of revenue or such director's designee shall at least monthly report the moneys paid pursuant to this section into the crime victims' compensation fund and the services to victims fund to the division of workers' compensation and the department of public safety, respectively.

6. The moneys collected by clerks of municipal courts pursuant to subsection 1 of this section shall be collected and disbursed as provided by sections 488.010 to 488.020, RSMo. Five percent of such moneys shall be payable to the city treasury of the city from which such funds were collected. The remaining ninety-five percent of such moneys shall be payable to the director of revenue. The funds received by the director of revenue pursuant to this subsection shall be distributed as follows:

(1) On the first of every month, the director of revenue or the director's designee shall determine the balance of the funds in the crime victims' compensation fund available to satisfy the amount of compensation payable pursuant to sections 595.010 to 595.075, excluding

sections 595.050 and 595.055;

(2) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available exceeds one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit fifty percent to the credit of the crime victims' compensation fund and fifty percent to the services to victims' fund established in section 595.100;

(3) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available is less than one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit seventy-five percent to the credit of the crime victims' compensation fund and twenty-five percent to the services to victims' fund established in section 595.100.

7. These funds shall be subject to a biennial audit by the Missouri state auditor. Such audit shall include all records associated with crime victims' compensation funds collected, held or disbursed by any state agency.

8. In addition to the moneys collected pursuant to subsection 1 of this section, the court shall enter a judgment in favor of the state of Missouri, payable to the crime victims' compensation fund, of sixty-eight dollars if the conviction is for a class A or B felony; forty-six dollars if the conviction is for a class C or D felony; and ten dollars if the conviction is for any misdemeanor under the following Missouri laws:

- (1) Chapter 195, RSMo, relating to drug regulations;
- (2) Chapter 311, RSMo, but relating only to felony violations of this chapter committed by persons not duly licensed by the supervisor of liquor control;
- (3) Chapter 491, RSMo, relating to witnesses;
- (4) Chapter 565, RSMo, relating to offenses against the person;
- (5) Chapter 566, RSMo, relating to sexual offenses;
- (6) Chapter 567, RSMo, relating to prostitution;
- (7) Chapter 568, RSMo, relating to offenses against the family;
- (8) Chapter 569, RSMo, relating to robbery, arson, burglary and related offenses;
- (9) Chapter 570, RSMo, relating to stealing and related offenses;
- (10) Chapter 571, RSMo, relating to weapons offenses;
- (11) Chapter 572, RSMo, relating to gambling;
- (12) Chapter 573, RSMo, relating to pornography and related offenses;

- (13) Chapter 574, RSMo, relating to offenses against public order;
- (14) Chapter 575, RSMo, relating to offenses against the administration of justice;
- (15) Chapter 577, RSMo, relating to public safety offenses.

Any clerk of the court receiving moneys pursuant to such judgments shall collect and disburse such crime victims' compensation judgments in the manner provided by sections 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and deposited to the credit of the crime victims' compensation fund.

9. The clerk of the court processing such funds shall maintain records of all dispositions described in subsection 1 of this section and all dispositions where a judgment has been entered against a defendant in favor of the state of Missouri in accordance with this section; all payments made on judgments for alcohol-related traffic offenses; and any judgment or portion of a judgment entered but not collected. These records shall be subject to audit by the state auditor. The clerk of each court transmitting such funds shall report separately the amount of dollars collected on judgments entered for alcohol-related traffic offenses from other crime victims' compensation collections or services to victims collections.

10. The clerks of the court shall report all delinquent payments to the department of revenue by October first of each year for the preceding fiscal year, and such sums may be withheld pursuant to subsection 15 of this section.

11. The department of revenue shall maintain records of funds transmitted to the crime victims' compensation fund by each reporting court and collections pursuant to subsection 18 of this section and shall maintain separate records of collection for alcohol-related offenses.

12. Notwithstanding any other provision of law to the contrary, the provisions of subsections 9 and 10 of this section shall expire and be of no force and effect upon the effective date of the supreme court rule adopted pursuant to sections 488.010 to 488.020, RSMo.

13. The state courts administrator shall include in the annual report required by section 476.350, RSMo, the circuit court caseloads and the number of crime victims' compensation judgments entered.

14. All awards made to injured victims under sections 595.010 to 595.105 and all appropriations for administration of sections 595.010 to 595.105, except sections 595.050 and 595.055, shall be made from the crime victims' compensation fund. Any unexpended balance remaining in the crime victims' compensation fund at the end of each biennium shall not be subject to the provision of section 33.080, RSMo, requiring the transfer of such unexpended balance to the ordinary revenue fund of the state, but shall remain in the crime victims' compensation fund. In the event that there are insufficient funds in the crime victims'

compensation fund to pay all claims in full, all claims shall be paid on a pro rata basis. If there are no funds in the crime victims' compensation fund, then no claim shall be paid until funds have again accumulated in the crime victims' compensation fund. When sufficient funds become available from the fund, awards which have not been paid shall be paid in chronological order with the oldest paid first. In the event an award was to be paid in installments and some remaining installments have not been paid due to a lack of funds, then when funds do become available that award shall be paid in full. All such awards on which installments remain due shall be paid in full in chronological order before any other postdated award shall be paid. Any award pursuant to this subsection is specifically not a claim against the state, if it cannot be paid due to a lack of funds in the crime victims' compensation fund.

15. When judgment is entered against a defendant as provided in this section and such sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the state of Missouri to such defendant an amount equal to the unpaid amount of such judgment. Such amount shall be paid forthwith to the crime victims' compensation fund and satisfaction of such judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for such judgment. The director of the department of corrections shall have the authority to pay into the crime victims' compensation fund from an offender's compensation or account the amount owed by the offender to the crime victims' compensation fund, provided that the offender has failed to pay the amount owed to the fund prior to entering a correctional facility of the department of corrections.

16. All interest earned as a result of investing funds in the crime victims' compensation fund shall be paid into the crime victims' compensation fund and not into the general revenue of this state.

17. Any person who knowingly makes a fraudulent claim or false statement in connection with any claim hereunder is guilty of a class A misdemeanor.

18. Any gifts, contributions, grants or federal funds specifically given to the division for the benefit of victims of crime shall be credited to the crime victims' compensation fund. Payment or expenditure of moneys in such funds shall comply with any applicable federal crime victims' compensation laws, rules, regulations or other applicable federal guidelines.