

SENATE BILL NO. 981

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

5671S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 595.025, 595.035, and 595.045, RSMo, and to enact in lieu thereof three new sections relating to compensation for crime victims.

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

Section A. Sections 595.025, 595.035, and 595.045, RSMo,
2 are repealed and three new sections enacted in lieu thereof, to
3 be known as sections 595.025, 595.035, and 595.045, to read as
4 follows:

595.025. 1. A claim for compensation may be filed by
2 a person eligible for compensation or, if the person is an
3 incapacitated or disabled person, or a minor, by the
4 person's spouse, parent, conservator, or guardian.

5 2. A claim **for compensation** shall be filed not later
6 than two years after [the occurrence of the crime or the
7 discovery of the crime upon which it is based] **any of the**
8 **following, whichever occurs later:**

9 (1) **The occurrence of the crime upon which the claim**
10 **is based;**

11 (2) **The discovery of the crime upon which the claim is**
12 **based;**

13 (3) **The filing of criminal charges relating to the**
14 **claimant's claim for compensation; or**

15 (4) **The conviction of a crime relating to the**
16 **claimant's claim for compensation.**

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **Notwithstanding the foregoing, a claim filed by a victim of**
18 **an offense under sections 566.030, 566.031, 566.032,**
19 **566.034, 566.060, 566.061, 566.062, 566.064, 566.067,**
20 **566.068, 566.069, 566.071, 566.083, 566.086, 566.093,**
21 **566.095, 566.100, 566.101, 566.209, 566.210, 566.211, or**
22 **568.020, may be brought at any time.**

23 3. Each claim shall be submitted to the department.
24 The department of public safety shall investigate such
25 claim, prior to the opening of formal proceedings. The
26 claimant shall be notified of the date and time of any
27 hearing on such claim. In determining the amount of
28 compensation for which a claimant is eligible, the
29 department shall consider the facts stated on the
30 application filed pursuant to section 595.015, and:

31 (1) Need not consider whether or not the alleged
32 assailant has been apprehended or brought to trial or the
33 result of any criminal proceedings against that person;
34 however, if any person is convicted of the crime which is
35 the basis for an application for compensation, proof of the
36 conviction shall be conclusive evidence that the crime was
37 committed;

38 (2) Shall determine the amount of the loss to the
39 claimant, or the victim's survivors or dependents;

40 (3) Shall determine the degree or extent to which the
41 victim's acts or conduct provoked, incited, or contributed
42 to the injuries or death of the victim.

43 4. The claimant may present evidence and testimony on
44 his own behalf or may retain counsel. The department of
45 public safety may, as part of any award entered under
46 sections 595.010 to 595.075, determine and allow reasonable
47 attorney's fees, which shall not exceed fifteen percent of
48 the amount awarded as compensation under sections 595.010 to

595.075, which fee shall be paid out of, but not in addition to, the amount of compensation, to the attorney representing the claimant. No attorney for the claimant shall ask for, contract for or receive any larger sum than the amount so allowed.

5. The person filing a claim shall, prior to any hearing thereon, submit reports, if available, from all hospitals, physicians, surgeons, or other health care providers who treated or examined the victim for the injury for which compensation is sought. A hospital, physician, surgeon, or other health care provider may submit reports on behalf of the person filing a claim. If, in the opinion of the department of public safety, an examination of the injured victim and a report thereon, or a report on the cause of death of the victim, would be of material aid, the department of public safety may appoint a duly qualified, impartial physician to make such examination and report.

6. Each and every payment shall be exempt from attachment, garnishment or any other remedy available to creditors for the collection of a debt.

7. Payments of compensation shall not be made directly to any person legally incompetent to receive them but shall be made to the parent, guardian or conservator for the benefit of such minor, disabled or incapacitated person.

595.035. 1. For the purpose of determining the amount of compensation payable pursuant to sections 595.010 to 595.075, the department of public safety shall, insofar as practicable, formulate standards for the uniform application of sections 595.010 to 595.075, taking into consideration the provisions of sections 595.010 to 595.075, the rates and amounts of compensation payable for injuries and death pursuant to other laws of this state and of the United

9 States, excluding pain and suffering **for any claimant other**
10 **than a victim of a crime**, and the availability of funds
11 appropriated for the purpose of sections 595.010 to
12 595.075. All decisions of the department of public safety
13 on claims pursuant to sections 595.010 to 595.075 shall be
14 in writing, setting forth the name of the claimant, the
15 amount of compensation and the reasons for the decision.

16 2. The crime victims' compensation fund is not a state
17 health program and is not intended to be used as a primary
18 payor to other health care assistance programs, but is a
19 public, quasi-charitable fund whose fundamental purpose is
20 to assist victims of violent crimes through a period of
21 financial hardship, as a payor of last resort. Accordingly,
22 any compensation paid pursuant to sections 595.010 to
23 595.075 shall be reduced by the amount of any payments,
24 benefits or awards received or to be received as a result of
25 the injury or death:

26 (1) From or on behalf of the offender;

27 (2) Under private or public insurance programs,
28 including Tricare, Medicare, Medicaid and other state or
29 federal programs, but not including any life insurance
30 proceeds; or

31 (3) From any other public or private funds, including
32 an award payable pursuant to the workers' compensation laws
33 of this state.

34 3. In determining the amount of compensation payable,
35 the department of public safety shall determine whether,
36 because of the victim's consent, provocation, incitement or
37 negligence, the victim contributed to the infliction of the
38 victim's injury or death, and shall reduce the amount of the
39 compensation or deny the claim altogether, in accordance
40 with such determination; provided, however, that the

41 department of public safety may disregard the responsibility
42 of the victim for his or her own injury where such
43 responsibility was attributable to efforts by the victim to
44 aid a victim, or to prevent a crime or an attempted crime
45 from occurring in his or her presence, or to apprehend a
46 person who had committed a crime in his or her presence or
47 had in fact committed a felony.

48 4. In determining the amount of compensation payable
49 pursuant to sections 595.010 to 595.075, monthly Social
50 Security disability or retirement benefits received by the
51 victim shall not be considered by the department as a factor
52 for reduction of benefits.

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

17 2. Notwithstanding any other provision of law to the
18 contrary, the moneys collected by clerks of the courts
19 pursuant to the provisions of subsection 1 of this section
20 shall be collected and disbursed in accordance with sections

21 488.010 to 488.020 and shall be payable to the director of
22 the department of revenue.

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

35 4. The remaining funds collected under subsection 1 of
36 this section shall be denoted to the payment of an annual
37 appropriation for the administrative and operational costs
38 of the office for victims of crime and, if a statewide
39 automated crime victim notification system is established
40 pursuant to section 650.310, to the monthly payment of
41 expenditures actually incurred in the operation of such
42 system. Additional remaining funds shall be subject to the
43 following provisions:

44 (1) On the first of every month, the director of
45 revenue or the director's designee shall determine the
46 balance of the funds in the crime victims' compensation fund
47 available to satisfy the amount of compensation payable
48 pursuant to sections 595.010 to 595.075, excluding sections
49 595.050 and 595.055;

50 (2) Beginning on September 1, 2004, and on the first
51 of each month, the director of revenue or the director's
52 designee shall deposit fifty percent of the balance of funds

53 available to the credit of the crime victims' compensation
54 fund and fifty percent to the services to victims' fund
55 established in section 595.100.

56 5. The director of revenue or such director's designee
57 shall at least monthly report the moneys paid pursuant to
58 this section into the crime victims' compensation fund and
59 the services to victims fund to the department of public
60 safety.

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

70 (1) On the first of every month, the director of
71 revenue or the director's designee shall determine the
72 balance of the funds in the crime victims' compensation fund
73 available to satisfy the amount of compensation payable
74 pursuant to sections 595.010 to 595.075, excluding sections
75 595.050 and 595.055;

76 (2) Beginning on September 1, 2004, and on the first
77 of each month the director of revenue or the director's
78 designee shall deposit fifty percent of the balance of funds
79 available to the credit of the crime victims' compensation
80 fund and fifty percent to the services to victims' fund
81 established in section 595.100.

82 7. These funds shall be subject to a biennial audit by
83 the Missouri state auditor. Such audit shall include all

84 records associated with crime victims' compensation funds
85 collected, held or disbursed by any state agency.

86 8. In addition to the moneys collected pursuant to
87 subsection 1 of this section, the court shall enter a
88 judgment in favor of the state of Missouri, payable to the
89 crime victims' compensation fund, of ~~[sixty-eight]~~ **one**
90 **hundred** dollars upon a plea of guilty or a finding of guilt
91 for a class A or B felony; ~~[forty-six]~~ **eighty** dollars upon a
92 plea of guilty or finding of guilt for a class C, D, or E
93 felony; and ~~[ten]~~ **forty** dollars upon a plea of guilty or a
94 finding of guilt for any misdemeanor under Missouri law
95 except for those in chapter 252 relating to fish and game,
96 chapter 302 relating to drivers' and commercial drivers'
97 license, chapter 303 relating to motor vehicle financial
98 responsibility, chapter 304 relating to traffic regulations,
99 chapter 306 relating to watercraft regulation and licensing,
100 and chapter 307 relating to vehicle equipment regulations.
101 Any clerk of the court receiving moneys pursuant to such
102 judgments shall collect and disburse such crime victims'
103 compensation judgments in the manner provided by sections
104 488.010 to 488.020. Such funds shall be payable to the
105 state treasury and deposited to the credit of the crime
106 victims' compensation fund.

107 9. The clerk of the court processing such funds shall
108 maintain records of all dispositions described in subsection
109 1 of this section and all dispositions where a judgment has
110 been entered against a defendant in favor of the state of
111 Missouri in accordance with this section; all payments made
112 on judgments for alcohol-related traffic offenses; and any
113 judgment or portion of a judgment entered but not
114 collected. These records shall be subject to audit by the
115 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 department of revenue shall maintain records of funds transmitted to the crime victims' compensation fund by each reporting court and collections pursuant to subsection 16 of this section and shall maintain separate records of collection for alcohol-related offenses.

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

12. 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 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

148 remaining installments have not been paid due to a lack of
149 funds, then when funds do become available that award shall
150 be paid in full. All such awards on which installments
151 remain due shall be paid in full in chronological order
152 before any other postdated award shall be paid. Any award
153 pursuant to this subsection is specifically not a claim
154 against the state, if it cannot be paid due to a lack of
155 funds in the crime victims' compensation fund.

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

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

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

181 16. The department may receive gifts and contributions
182 for the benefit of crime victims. Such gifts and
183 contributions shall be credited to the crime victims'
184 compensation fund as used solely for compensating victims
185 under the provisions of sections 595.010 to 595.075.

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