

SUBSTITUTE FOR
HOUSE BILL NO. 6602

A bill to amend 1976 PA 223, entitled

"An act to create an agency concerned with crime victim services; to prescribe its powers and duties; to provide compensation to certain victims of crimes; to provide for the promulgation of rules; and to provide for penalties,"

by amending sections 2, 4, 5, 10, and 11 (MCL 18.352, 18.354, 18.355, 18.360, and 18.361), as amended by 1996 PA 519, and by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) The crime victims compensation board formerly
2 created within the department of management and budget under this
3 section is renamed the crime victim services commission, which
4 shall continue as the successor agency of the board in all respects
5 and for all purposes. Office budget development, procurement, and
6 related management functions shall be performed by the department
7 of ~~management and budget~~ **COMMUNITY HEALTH**.

1 (2) Members of the crime victims compensation board shall
2 continue in office as commission members for their unexpired terms.
3 The commission shall consist of 5 members as follows, of whom not
4 more than 3 shall belong to the same political party and who shall
5 be appointed by the governor with the advice and consent of the
6 senate:

7 (a) One member admitted to the practice of law in this state
8 for not less than 5 years immediately preceding his or her
9 appointment.

10 (b) One member who is a county prosecuting attorney.

11 (c) One member who is a peace officer.

12 (d) One member who is a member of the medical profession.

13 (e) One member who is a community-based victim advocate.

14 (3) A member's term of office shall be 3 years, except that of
15 the 2 members appointed to satisfy the expanded membership
16 requirement created by ~~the 1996 amendatory act that amended this~~
17 ~~section~~ **1996 PA 519**, 1 shall be appointed to serve an initial term
18 of 2 years and the other shall be appointed to serve an initial
19 term of 3 years. A member appointed to fill a vacancy occurring
20 otherwise than by expiration of a term shall be appointed for the
21 remainder of the unexpired term.

22 (4) The governor shall designate 1 commission member to serve
23 as chairperson at the governor's pleasure.

24 (5) The commission members shall be paid on a per diem basis
25 as determined by the legislature.

26 Sec. 4. (1) Except as provided in subsection (2), the
27 following persons are eligible for awards:

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(a) A victim or an intervenor of a crime.

(b) A surviving spouse, parent, grandparent, child, sibling, or grandchild of a victim of a crime who died as a direct result of the crime.

~~(c) Any other person dependent for his or her principal support upon a victim of a crime who died as a direct result of the crime.~~
A SURVIVING PERSON RELATED TO THE VICTIM BY BLOOD OR AFFINITY, A GUARDIAN, [PERSONAL REPRESENTATIVE], OR MEMBER OF THE SAME HOUSEHOLD AS THE VICTIM.

(D) A HEALTH CARE PROVIDER SEEKING PAYMENT UNDER SECTION 5A.

(2) A person is not eligible to receive an award if the person is either of the following:

(a) Criminally responsible for the crime.

(b) An accomplice to the crime.

(3) An award shall not be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of \$200.00 or has lost at least 2 continuous weeks' earnings or support, but the commission may waive the limitations of this subsection in the case of a claimant retired by reason of age or disability. If the claimant is a victim of criminal sexual conduct in the first, second, or third degree, the commission may waive the limitations of this subsection. **THE COMMISSION SHALL WAIVE THIS LIMITATION FOR HEALTH CARE PROVIDERS SEEKING PAYMENT UNDER SECTION 5A.**

Sec. 5. (1) A claim may be filed by the person eligible to receive an award or, if a person is a minor, by his or her parent or guardian.

(2) Except as provided in subsection (3), a claim shall be

1 filed by the claimant not later than 1 year after the occurrence of
2 the crime upon which the claim is based, except as follows:

3 (a) If police records show that a victim of criminal sexual
4 conduct in the first, second, or third degree was less than 18
5 years of age at the time of the occurrence and that the victim
6 reported the crime before attaining 19 years of age, a claim based
7 on that crime may be filed **BY A PERSON LISTED IN SECTION 4(1)(A),**
8 **(B), OR (C)** not later than 1 year after the crime was reported.

9 (b) A claim may be filed within 1 year after the discovery by
10 a law enforcement agency that injuries previously determined to be
11 accidental, of unknown origin, or resulting from natural causes,
12 were incurred as the result of a crime.

13 (3) Upon petition by the claimant and for good cause shown,
14 the commission may extend the period in which a claim may be filed
15 under subsection (2).

16 (4) A claim shall be filed in the commission's office in
17 person or by mail. The commission shall accept for filing a claim
18 that is submitted by a person who is eligible and which alleges the
19 jurisdictional requirements set forth in this act and meets the
20 requirements as to form as approved by the commission.

21 (5) Upon filing of a claim **BY A PERSON LISTED IN SECTION**
22 **4(1)(A), (B), OR (C)**, the commission shall promptly notify the
23 prosecuting attorney of the county in which the crime is alleged to
24 have occurred. If, within 20 days after the notification, the
25 prosecuting attorney advises the commission that a criminal
26 prosecution is pending upon the same alleged crime and requests
27 that action by the commission be deferred, the commission shall

1 defer the proceedings until the criminal prosecution is concluded.
2 When the criminal prosecution is concluded, the prosecuting
3 attorney shall promptly notify the commission. This section does
4 not prohibit the commission from granting emergency awards pursuant
5 to section 9 OR FROM PAYING A HEALTH CARE PROVIDER UNDER SECTION
6 5A.

7 SEC. 5A. (1) A HEALTH CARE PROVIDER IS ELIGIBLE TO BE PAID FOR
8 A SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION UNDER THIS SECTION
9 ONLY IF THAT EXAMINATION INCLUDES ALL OF THE FOLLOWING:

10 (A) THE COLLECTION OF A MEDICAL HISTORY.

11 (B) A GENERAL MEDICAL EXAMINATION, INCLUDING, BUT NOT LIMITED
12 TO, THE USE OF LABORATORY SERVICES AND THE DISPENSING OF PRESCRIBED
13 PHARMACEUTICAL ITEMS.

14 (C) ONE OR MORE OF THE FOLLOWING:

15 (i) A DETAILED ORAL EXAMINATION.

16 (ii) A DETAILED ANAL EXAMINATION.

17 (iii) A DETAILED GENITAL EXAMINATION.

18 (D) ADMINISTRATION OF A SEXUAL ASSAULT EVIDENCE KIT UNDER
19 SECTION 21527 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
20 333.21527, AND RELATED MEDICAL PROCEDURES AND LABORATORY AND
21 PHARMACOLOGICAL SERVICES.

22 (2) A HEALTH CARE PROVIDER SHALL NOT SUBMIT A BILL FOR ANY
23 PORTION OF THE COSTS OF A SEXUAL ASSAULT MEDICAL FORENSIC
24 EXAMINATION TO THE VICTIM OF THE SEXUAL ASSAULT, INCLUDING ANY
25 INSURANCE DEDUCTIBLE OR CO-PAY, DENIAL OF CLAIM BY AN INSURER, OR
26 ANY OTHER OUT-OF-POCKET EXPENSE.

27 (3) A HEALTH CARE PROVIDER SEEKING PAYMENT UNDER THIS SECTION

1 FOR A SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION SHALL DO ALL OF
2 THE FOLLOWING:

3 (A) ADVISE THE VICTIM, ORALLY AND IN WRITING, THAT A CLAIM
4 SHALL NOT BE SUBMITTED TO HIS OR HER INSURANCE CARRIER WITHOUT HIS
5 OR HER EXPRESS WRITTEN CONSENT, AND THAT HE OR SHE MAY DECLINE TO
6 CONSENT IF HE OR SHE BELIEVES THAT SUBMITTING A CLAIM TO THE
7 INSURANCE CARRIER WOULD SUBSTANTIALLY INTERFERE WITH HIS OR HER
8 PERSONAL PRIVACY OR SAFETY.

9 (B) IF THE VICTIM GIVES HIS OR HER CONSENT AS PROVIDED UNDER
10 SUBDIVISION (A), SUBMIT A CLAIM FOR THE COST OF A SEXUAL ASSAULT
11 MEDICAL FORENSIC EXAMINATION TO THE VICTIM'S INSURANCE CARRIER,
12 INCLUDING, BUT NOT LIMITED TO, MEDICAID AND MEDICARE.

13 (4) A HEALTH CARE PROVIDER MAY SEEK PAYMENT FROM 1 OR BOTH OF
14 THE FOLLOWING IF REIMBURSEMENT CANNOT BE OBTAINED FROM THE VICTIM'S
15 INSURANCE OR INSURANCE IS UNAVAILABLE:

16 (A) THE COMMISSION UNDER THIS SECTION.

17 (B) FROM ANOTHER ENTITY OTHER THAN THE VICTIM.

18 (5) A HEALTH CARE PROVIDER THAT IS REIMBURSED FOR A SEXUAL
19 ASSAULT MEDICAL FORENSIC EXAMINATION BY A VICTIM'S INSURANCE
20 CARRIER SHALL NOT SUBMIT TO THE COMMISSION ANY PORTION OF THE CLAIM
21 REIMBURSABLE BY THE INSURANCE CARRIER.

22 (6) A HEALTH CARE PROVIDER THAT IS REIMBURSED FOR A SEXUAL
23 ASSAULT MEDICAL FORENSIC EXAMINATION BY ANOTHER ENTITY SHALL NOT
24 SUBMIT TO THE COMMISSION ANY PORTION OF THE CLAIM REIMBURSABLE BY
25 THE OTHER ENTITY.

26 (7) THE COMMISSION SHALL PAY A HEALTH CARE PROVIDER NOT MORE
27 THAN \$1,200.00 FOR THE COST OF PERFORMING A SEXUAL ASSAULT MEDICAL

FORENSIC EXAMINATION, INCLUDING, BUT NOT LIMITED TO, THE COST OF 1
OR MORE OF THE FOLLOWING:

(A) NOT MORE THAN \$800.00 FOR THE USE OF AN EMERGENCY ROOM,
CLINIC, OR EXAMINATION ROOM, AND THE SEXUAL ASSAULT MEDICAL
FORENSIC EXAMINATION AND RELATED PROCEDURES OTHER THAN SERVICES AND
ITEMS DESCRIBED IN SUBDIVISIONS (B) AND (C).

(B) NOT MORE THAN \$250.00 FOR LABORATORY SERVICES.

(C) NOT MORE THAN \$150.00 FOR DISPENSING PHARMACEUTICAL ITEMS
RELATED TO THE SEXUAL ASSAULT.

(8) A CLAIM FOR COMPENSATION UNDER SUBSECTION (7) SHALL BE
SUBMITTED TO THE COMMISSION IN A FORM AND IN THE MANNER PRESCRIBED
BY THE COMMISSION.

(9) EXCEPT WITH THE VICTIM'S CONSENT OR AS OTHERWISE PROVIDED
IN THIS SUBSECTION, INFORMATION COLLECTED BY THE COMMISSION UNDER
THIS SECTION THAT IDENTIFIES A VICTIM OF SEXUAL ASSAULT IS EXEMPT
FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 446,
MCL 15.231 TO 15.246, SHALL NOT BE OBTAINED BY SUBPOENA OR IN
DISCOVERY, AND IS INADMISSIBLE AS EVIDENCE IN ANY CIVIL, CRIMINAL,
OR ADMINISTRATIVE PROCEEDING. INFORMATION COLLECTED BY THE
COMMISSION UNDER THIS SECTION THAT IDENTIFIES A VICTIM OF SEXUAL
ASSAULT IS CONFIDENTIAL AND SHALL ONLY BE USED FOR THE PURPOSES
EXPRESSLY PROVIDED IN THIS ACT, INCLUDING, BUT NOT LIMITED TO,
INVESTIGATING AND PROSECUTING A CIVIL OR CRIMINAL ACTION FOR FRAUD
RELATED TO REIMBURSEMENT PROVIDED BY THE COMMISSION UNDER THIS
SECTION.

(10) A VICTIM OF SEXUAL ASSAULT SHALL NOT BE REQUIRED TO
PARTICIPATE IN THE CRIMINAL JUSTICE SYSTEM OR COOPERATE WITH LAW

1 ENFORCEMENT AS A CONDITION OF BEING ADMINISTERED A SEXUAL ASSAULT
2 MEDICAL FORENSIC EXAMINATION. FOR PAYMENTS AUTHORIZED UNDER THIS
3 SECTION, THE VICTIM'S REQUEST FOR A SEXUAL ASSAULT MEDICAL FORENSIC
4 EXAMINATION SATISFIES THE REQUIREMENTS FOR PROMPT LAW ENFORCEMENT
5 REPORTING AND VICTIM COOPERATION UNDER SECTIONS 6 AND 10.

6 (11) AS USED IN THIS SECTION:

7 (A) "HEALTH CARE PROVIDER" MEANS ANY OF THE FOLLOWING:

8 (i) A HEALTH PROFESSIONAL LICENSED OR REGISTERED UNDER ARTICLE
9 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16101 TO
10 333.18838.

11 (ii) A HEALTH FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 OF
12 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20101 TO 333.22260.

13 (iii) A LOCAL HEALTH DEPARTMENT AS THAT TERM IS DEFINED IN
14 SECTION 1105 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.1105.

15 (B) "SEXUAL ASSAULT" MEANS A CRIMINAL VIOLATION OF SECTIONS
16 520A TO 520/ OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A
17 TO 750.520/.

18 (C) "SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATION" MEANS THAT
19 TERM AS DESCRIBED IN SUBSECTION (1) (A) TO (D).

20 Sec. 10. An award shall not be made unless the investigation
21 of the claim verifies the following facts:

22 (a) A crime was committed.

23 (b) The crime directly resulted in personal physical injury
24 to, or death of, the victim.

25 (c) Police records show that the crime was reported promptly
26 to the proper authorities. An award ~~may~~ **SHALL** not be made ~~where~~ **IF**
27 the police records show that the report was made more than 48 hours

1 after the occurrence of the crime unless ~~either~~ **ANY** of the
2 following **CIRCUMSTANCES** apply:

3 (i) The crime was criminal sexual conduct committed against a
4 victim who was less than 18 years of age at the time of the
5 occurrence and the crime was reported before the victim attained 19
6 years of age.

7 (ii) The commission, for good cause shown, finds the delay was
8 justified.

9 **(iii) THE COMMISSION IS MAKING A PAYMENT UNDER SECTION 5A.**

10 (d) That the crime did not occur while the victim was confined
11 in a federal, state, or local correctional facility.

12 Sec. 11. (1) ~~An~~ **EXCEPT FOR A CLAIM UNDER SECTION 5A, AN** award
13 made under this act shall be an amount not more than an out-of-
14 pocket loss, including indebtedness reasonably incurred for medical
15 or other services necessary as a result of the injury upon which
16 the claim is based, together with loss of earnings or support
17 resulting from the injury. The aggregate award under this act shall
18 not exceed \$15,000.00 per claimant.

19 (2) Unless reduced under this act, an award made for loss of
20 earnings or support shall be in an amount equal to the actual loss
21 sustained. An award shall not exceed \$200.00 for each week of lost
22 earnings or support.

23 (3) An award made for funeral expenses, including burial
24 expenses and grief counseling, shall be not less than \$200.00 or
25 more than \$2,000.00 for each victim. The award may include not more
26 than \$500.00 to reimburse expenses for grief counseling for the
27 victim's spouse, child, parent, or sibling.

1 (4) An award for psychological counseling shall not exceed 26
2 hourly sessions per victim or intervenor. The award may include not
3 more than 8 family sessions that include any of the victim's or
4 intervenor's spouse, children, parents, or siblings who are not
5 criminally responsible for or an accomplice to the crime. The
6 maximum hourly reimbursement rate shall not exceed \$80.00 per
7 hourly session for a therapist or counselor licensed or registered
8 to practice in this state, except that the maximum hourly
9 reimbursement rate shall not exceed \$95.00 per hourly session for a
10 psychologist or physician licensed to practice in this state.

11 (5) An award shall be reduced by the amount of 1 or more of
12 the following payments received or to be received as a result of
13 the injury:

14 (a) From or on behalf of the person who committed the crime.

15 (b) From insurance, but not including disability or death
16 benefits paid or to be paid to a peace officer or a corrections
17 officer on account of injuries sustained in the course of
18 employment.

19 (c) From public funds, but not including disability or death
20 benefits paid or to be paid to a peace officer or a corrections
21 officer on account of injuries sustained in the course of
22 employment.

23 (d) From an emergency award under section 9.

24 (6) ~~The~~ **IN MAKING A DETERMINATION ON A CLAIM FILED BY A PERSON**
25 **LISTED IN SECTION 4(1)(A), (B), OR (C), THE** commission shall
26 determine whether the victim's misconduct contributed to his or her
27 injury and shall reduce the amount of the award or reject the claim

1 altogether, in accordance with the determination. The commission
2 may disregard for this purpose the victim's responsibility for his
3 or her own injury if the record shows that the injury was
4 attributable to the victim's efforts to prevent a crime or an
5 attempted crime from occurring in his or her presence or to
6 apprehend a person who had committed a crime in his or her
7 presence. As used in this subsection, "misconduct" includes but is
8 not limited to provocation of or participation in a crime
9 contemporaneous with or immediately preceding the injury.

10 (7) ~~IF~~ **EXCEPT FOR A CLAIM UNDER SECTION 5A, IF** the commission
11 finds that the claimant will not suffer serious financial hardship
12 as a result of the loss of earnings or support and the out-of-
13 pocket expenses incurred as a result of the injury if he or she is
14 not granted financial assistance, the commission shall deny the
15 award. In determining the serious financial hardship, the
16 commission shall consider all of the financial resources of the
17 claimant.

18 (8) If the commission determines that the payment of an award
19 will cause substantial unjust enrichment and economic benefit to a
20 person criminally responsible for the crime, the commission shall
21 deny the payment.