

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 209

98TH GENERAL ASSEMBLY

0259H.02P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 595.010, 595.015, and 595.030, RSMo, and to enact in lieu thereof three new sections relating to crime victim compensation.

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

Section A. Sections 595.010, 595.015, and 595.030, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 595.010, 595.015, and 595.030, to read as follows: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, **or a funeral home if the victim's family or next of kin designates it as such under section 595.015;**

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

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

17 (5) "Crime", an act committed in this state which, if committed by a mentally competent,  
18 criminally responsible person who had no legal exemption or defense, would constitute a crime;  
19 provided that, such act involves the application of force or violence or the threat of force or  
20 violence by the offender upon the victim but shall include the crime of driving while intoxicated,  
21 vehicular manslaughter and hit and run; and provided, further, that no act involving the operation  
22 of a motor vehicle except driving while intoxicated, vehicular manslaughter and hit and run  
23 which results in injury to another shall constitute a crime for the purpose of sections 595.010 to  
24 595.075, unless such injury was intentionally inflicted through the use of a motor vehicle. A  
25 crime shall also include an act of terrorism, as defined in 18 U.S.C. Section 2331, which has  
26 been committed outside of the United States against a resident of Missouri;

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

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

30 (8) "Dependent", mother, father, spouse, spouse's mother, spouse's father, child,  
31 grandchild, adopted child, illegitimate child, niece or nephew, who is wholly or partially  
32 dependent for support upon, and living with, but shall include children entitled to child support  
33 but not living with, the victim at the time of his injury or death due to a crime alleged in a claim  
34 pursuant to sections 595.010 to 595.075;

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

38 (10) "Director", the director of public safety of this state or a person designated by him  
39 for the purposes of sections 595.010 to 595.075;

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

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

47 (13) "Earnings", net income or net wages;

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

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

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

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

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

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

65 (20) "Injured victim", a person:

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

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

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

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

76 (22) "Offender", a person who commits a crime;

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

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

82 (25) "Public agency", a part of any local or state government organization which  
83 provides services to victims of crime;

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

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

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

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

92 2. As used in sections 565.024 and 565.060 and sections 595.010 to 595.075, the term  
93 "alcohol-related traffic offense" means those offenses defined by sections 577.001, 577.010, and  
94 577.012, and any county or municipal ordinance which prohibits operation of a motor vehicle  
95 while under the influence of alcohol.

595.015. 1. The department of public safety shall, pursuant to the provisions of sections  
2 595.010 to 595.075, have jurisdiction to determine and award compensation to, or on behalf of,  
3 victims of crimes. In making such determinations and awards, the department shall ensure the  
4 compensation sought is reasonable and consistent with the limitations described in sections  
5 595.010 to 595.075. Additionally, if compensation being sought includes medical expenses, the  
6 department shall further ensure that such expenses are medically necessary. The department of  
7 public safety may pay directly to the provider of the services compensation for medical or funeral  
8 expenses, or expenses for other services as described in section 595.030, incurred by the  
9 claimant. The department is not required to provide compensation in any case, nor is it required  
10 to award the full amount claimed. The department shall make its award of compensation based  
11 upon independent verification obtained during its investigation.

12 2. Such claims shall be made by filing an application for compensation with the  
13 department of public safety. The application form shall be furnished by the department and the  
14 signature shall be notarized. The application shall include:

15 (1) The name and address of the victim;

16 (2) If the claimant is not the victim, the name and address of the claimant and  
17 relationship to the victim, the names and addresses of the victim's dependents, if any, and the  
18 extent to which each is so dependent;

19 (3) The date and nature of the crime or attempted crime on which the application for  
20 compensation is based;

21 (4) The date and place where, and the law enforcement officials to whom, notification  
22 of the crime was given;

23 (5) The nature and extent of the injuries sustained by the victim, the names and addresses  
24 of those giving medical and hospital treatment to the victim and whether death resulted;

25 (6) The loss to the claimant or a dependent resulting from the injury or death;

26 (7) The amount of benefits, payments or awards, if any, payable from any source which  
27 the claimant or dependent has received or for which the claimant or dependent is eligible as a  
28 result of the injury or death;

29 (8) Releases authorizing the surrender to the department of reports, documents and other  
30 information relating to the matters specified under this section; and

31 (9) Such other information as the department determines is necessary.

32 3. In addition to the application, the department may require that the claimant submit  
33 materials substantiating the facts stated in the application.

34 4. If the department finds that an application does not contain the required information  
35 or that the facts stated therein have not been substantiated, it shall notify the claimant in writing  
36 of the specific additional items of information or materials required and that the claimant has  
37 thirty days from the date of mailing in which to furnish those items to the department. Unless  
38 a claimant requests and is granted an extension of time by the department, the department shall  
39 reject with prejudice the claim of the claimant for failure to file the additional information or  
40 materials within the specified time.

41 5. The claimant may file an amended application or additional substantiating materials  
42 to correct inadvertent errors or omissions at any time before the department has completed its  
43 consideration of the original application.

44 6. The claimant, victim or dependent shall cooperate with law enforcement officials in  
45 the apprehension and prosecution of the offender in order to be eligible, or the department has  
46 found that the failure to cooperate was for good cause.

47 7. Any state or local agency, including a prosecuting attorney or law enforcement agency,  
48 shall make available without cost to the fund all reports, files and other appropriate information  
49 which the department requests in order to make a determination that a claimant is eligible for an  
50 award pursuant to sections 595.010 to 595.075.

51 **8. If the victim is deceased, the victim's family or next of kin may sign a notarized**  
52 **statement designating the funeral home as a claimant eligible for compensation from the**  
53 **crime victims' compensation fund provided such funeral home complies with the**  
54 **provisions of this section.**

595.030. 1. No compensation shall be paid unless the claimant has incurred an  
2 out-of-pocket loss of at least fifty dollars or has lost two continuous weeks of earnings or support  
3 from gainful employment. "Out-of-pocket loss" shall mean unreimbursed or unreimbursable  
4 expenses or indebtedness reasonably incurred:

5 (1) For medical care or other services, including psychiatric, psychological or counseling  
6 expenses, necessary as a result of the crime upon which the claim is based, except that the  
7 amount paid for psychiatric, psychological or counseling expenses per eligible claim shall not  
8 exceed two thousand five hundred dollars; or

9 (2) As a result of personal property being seized in an investigation by law enforcement.  
10 Compensation paid for an out-of-pocket loss under this subdivision shall be in an amount equal  
11 to the loss sustained, but shall not exceed two hundred fifty dollars.

12 2. No compensation shall be paid unless the department of public safety finds that a  
13 crime was committed, that such crime directly resulted in personal physical injury to, or the death  
14 of, the victim, and that police records show that such crime was promptly reported to the proper  
15 authorities. In no case may compensation be paid if the police records show that such report was  
16 made more than forty-eight hours after the occurrence of such crime, unless the department of  
17 public safety finds that the report to the police was delayed for good cause. If the victim is under  
18 eighteen years of age such report may be made by the victim's parent, guardian or custodian; by  
19 a physician, a nurse, or hospital emergency room personnel; by the children's division personnel;  
20 or by any other member of the victim's family. In the case of a sexual offense, filing a report of  
21 the offense to the proper authorities may include, but not be limited to, the filing of the report  
22 of the forensic examination by the appropriate medical provider, as defined in section 595.220,  
23 with the prosecuting attorney of the county in which the alleged incident occurred.

24 3. No compensation shall be paid for medical care if the service provider is not a medical  
25 provider as that term is defined in section 595.027, and the individual providing the medical care  
26 is not licensed by the state of Missouri or the state in which the medical care is provided.

27 4. No compensation shall be paid for psychiatric treatment or other counseling services,  
28 including psychotherapy, unless the service provider is a:

29 (1) Physician licensed pursuant to chapter 334 or licensed to practice medicine in the  
30 state in which the service is provided;

31 (2) Psychologist licensed pursuant to chapter 337 or licensed to practice psychology in  
32 the state in which the service is provided;

33 (3) Clinical social worker licensed pursuant to chapter 337; [or]

34 (4) Professional counselor licensed pursuant to chapter 337; or

35 **(5) Board certified psychiatric-mental health clinical nurse specialist or board**  
36 **certified psychiatric-mental health nurse practitioner licensed under chapter 335 or**  
37 **licensed in the state in which the service is provided.**

38 5. Any compensation paid pursuant to sections 595.010 to 595.075 for death or personal  
39 injury shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or  
40 support from gainful employment, not to exceed [two] **four** hundred dollars per week, resulting  
41 from such injury or death. In the event of death of the victim, an award may be made for  
42 reasonable and necessary expenses actually incurred for preparation and burial not to exceed five  
43 thousand dollars.

44           6. Any compensation for loss of earnings or support from gainful employment shall be  
45 in an amount equal to the actual loss sustained not to exceed [two] **four** hundred dollars per  
46 week; provided, however, that no award pursuant to sections 595.010 to 595.075 shall exceed  
47 twenty-five thousand dollars. If two or more persons are entitled to compensation as a result of  
48 the death of a person which is the direct result of a crime or in the case of a sexual assault, the  
49 compensation shall be apportioned by the department of public safety among the claimants in  
50 proportion to their loss.

51           7. The method and timing of the payment of any compensation pursuant to sections  
52 595.010 to 595.075 shall be determined by the department.

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