

ACT 226

S. B. 16.

A Bill for an Act Relating to Victims of Criminal Acts, to Provide for Compensation of Victims of Certain Crimes or Dependents of Deceased Victims, and for Indemnification of Private Citizens for Personal Injury or

Property Damage Suffered in Prevention of Crime or Apprehension of a Criminal.

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

SECTION 1. The Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new chapter to be appropriately numbered and to read as follows:

“CHAPTER
CRIMINAL INJURIES COMPENSATION ACT

PART I. INTRODUCTORY

Section-1. Purpose. The purpose of this chapter is to aid victims of criminal acts, by providing compensation for victims of certain crimes or dependents of deceased victims, and for indemnification of private citizens for personal injury or property damage suffered in prevention of crime or apprehension of a criminal.

Section-2. Definitions. As used in this chapter, unless the context otherwise requires:

‘Child’ means an unmarried person who is under twenty years of age and includes a stepchild or an adopted child;

‘Commission’ means the criminal injuries compensation commission established by this chapter;

‘Dependents’ mean such relatives of a deceased victim who were wholly or partially dependent upon his income at the time of his death or would have been so dependent but of the incapacity due to the injury from which the death resulted and shall include the child of such victim born after his death;

‘Injury’ means actual bodily harm and, in respect of a victim, includes pregnancy and mental or nervous shock; and ‘Injured’ has a corresponding meaning;

‘Private citizen’ means any natural person other than a peace officer of the State;

‘Relative’ means a victim’s spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse’s parents;

‘Victim’ means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State which is within the description of any of the crimes specified in section ...-31 of this chapter.

PART II. ESTABLISHMENT OF COMMISSION

Section-10. Criminal injuries compensation commission. There is hereby established a criminal injuries compensation commission which shall be composed of three members to be appointed and be removable in the manner prescribed by section 14A-3. One member of the commission shall be an attorney who has been admitted to practice before the

supreme court of the State for at least five years. No officer or employee of the State or any political subdivision thereof shall be eligible for appointment to the commission. The commission is hereby placed within the department of social services for administrative purposes.

Section-11. Tenure and compensation of members. The term of office of each member of the commission shall be four years or until his successor is appointed except that (1) the terms of office of the members first taking office shall expire as designated by the governor at the time of the appointment, one on December 31, 1968, one on December 31, 1969, and one on December 31, 1970; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. Each member of the commission shall be eligible for reappointment, subject to the provisions of section 14A-3. A vacancy in the commission shall not affect its powers. If any member of the commission is unable to act because of absence, illness or other sufficient cause, the governor may make a temporary appointment, and such appointee shall have all the powers and duties of a regular member of the commission for the period of his appointment.

Each member of the commission except the chairman shall be compensated at the rate of \$50 per day for each day's actual attendance to his duties, provided such compensation shall not exceed a maximum of \$6,600 per year. The chairman shall be compensated at the rate of \$55 per day for each day's actual attendance to his duties, provided such compensation shall not exceed a maximum of \$7,200 per year. The members of the commission shall be paid their necessary travelling and subsistence expenses incurred in the discharge of their duties.

Section-12. Powers and procedures of commission. Upon an application made to the commission under the provisions of this chapter, the commission shall fix a time and place for a hearing on such application and shall cause notice thereof to be given to the applicant. The commission may hold such hearings, sit and act at such times and places, and take such testimony as the commission may deem advisable. The chairman and one other member of the commission shall constitute a quorum; and where opinion is divided and only one other member is present, the opinion of the chairman shall prevail. Any member of the commission may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have such powers of subpoena and compulsion of attendance of witnesses and production of documents and of examination of witnesses as are conferred upon a circuit court. Subpoenas shall be issued under the signature of the chairman. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required shall have power, upon the application of the commission, to enforce the attendance and testimony of any witness and the production of any document so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts, and shall be payable from funds appropriated for expenses of administration.

Section-13. Hearings and evidence. Where any application is made to the commission under this chapter, the applicant and the commission's legal adviser shall be entitled to appear and be heard. Any other person may appear and be heard who satisfied the commission that he has a substantial interest in the proceedings. In any case in which the person entitled to make an application is a child, the application may be made on his behalf by any person acting as his parent or guardian. In any case in which the person entitled to make an application is mentally defective, the application may be made on his behalf by his guardian or such other individual authorized to administer his estate.

Where under this chapter any person is entitled to appear and be heard by the commission, that person may appear in person or by his attorney. All hearings shall be open to the public unless in a particular case the commission determines that the hearing, or a portion thereof, should be held in private, having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

Every person appearing under this section shall have the right to produce evidence and to cross-examine witnesses. The commission may receive in evidence any statement, document, information, or matter that may in the opinion of the commission contribute to its functions under this chapter, whether or not such statement, document, information, or matter would be admissible in a court of law.

If any person has been convicted of any offense with respect to an act or omission on which a claim under this chapter is based, proof of that conviction shall, unless an appeal against the conviction or a petition for a rehearing in respect of the charge is pending or a new trial or rehearing has been ordered, be taken as conclusive evidence that the offense has been committed.

Section-14. Medical examination. The commission may appoint an impartial licensed physician to examine any person making application under this chapter, and the fees for such examination shall be paid from funds appropriated for expenses of administration.

Section-15. Attorneys' fees. The commission may, as a part of any order entered under this chapter, determine and allow reasonable attorneys' fees, which if the award of compensation is more than \$1,000 shall not exceed 15 per centum of such award, to be paid out of but not in addition to such award, to the attorneys representing the applicant, provided that the amount of the attorneys' fees shall not, in any event, exceed the award of compensation remaining after deducting that portion thereof for expenses actually incurred by the claimant.

Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than \$2,000.

Section-16. Judicial review. Any person aggrieved by a final order or decision of the commission on the sole ground that the order or

decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the Supreme Court, provided the appeal is filed within thirty days after service of a certified copy of the order or decision. Except as provided in the preceding sentence, orders and decisions of the commission shall be conclusive and not subject to judicial review.

PART III. COMPENSATION TO VICTIMS OR DEPENDENTS

Section -----30. Eligibility for compensation. (a) In the event any person is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after the effective date of this Act, which act or omission is within the description of the crimes enumerated in section ...-31 of this chapter, the commission may, in its discretion, upon an application, order the payment of compensation in accordance with the provisions of this chapter:

(1) to or for the benefit of the victim; or

(2) to any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury; or

(3) in the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim.

(b) For the purposes of this chapter, a person shall be deemed to have intentionally committed an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise he was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused his injury or death and the commission shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim.

(d) An order may be made under this section whether or not any person is prosecuted for or convicted of a crime arising out of an act or omission described in subsection (a), provided an arrest has been made or such act or omission has been reported to the police without undue delay. No order may be made under this section unless the commission finds that:

(1) such an act or omission did occur; and

(2) the injury or death of the victim resulted from such act or omission. Upon application from the prosecuting attorney of the appropriate county, the commission may suspend proceedings under this chapter for such period as it deems desirable on the ground that a prosecution for a crime arising out of such act or omission has been commenced or is imminent.

Section -----31. Violent crimes. The crimes to which part III of this chapter applies are the following enumerated offenses and all other offenses in which any enumerated offense is necessarily included:

(1) Arson—Sec. 263-2;

(2) Intermediate Assault or Battery—Sec. 264-5;

- (3) Aggravated Assault or Battery—Sec. 264-3 or any other aggravated assault offense enacted by law;
- (4) Use of dangerous substances—Sec. 264-4;
- (5) Murder—Sec. 291-7;
- (6) Manslaughter—Sec. 291-7;
- (7) Kidnapping—Sec. 292-1;
- (8) Child-stealing—Sec. 292-4;
- (9) Unlawful use of explosives—Sec. 296-8;
- (10) Sexual intercourse with a female under sixteen—Sec. 309-14;
- (11) Assault with intent to rape or ravish—Sec. 309-16;
- (12) Indecent Assault—Sec. 309-17;
- (13) Carnal abuse of female under twelve—Sec. 309-20;
- (14) Rape—Sec. 309-31;
- (15) Attempted Rape—Secs. 248-1, 309-31.

Section-32. Award of compensation. The commission may order the payment of compensation under this part for:

- (1) expenses actually and reasonably incurred as a result of the injury or death of the victim;
- (2) loss to the victim of earning power as a result of total or partial incapacity;
- (3) pecuniary loss to the dependents of the deceased victim;
- (4) pain and suffering to the victim; and
- (5) any other pecuniary loss directly resulting from the injury or death of the victim which the commission determines to be reasonable and proper.

Section-33. Relationship to offender. No compensation shall be awarded, except for expenses specified in section ...-32(1), if the victim:

- (1) is a relative of the offender; or
- (2) was at the time of his injury or death living with the offender as spouse or as a member of the offender's household.

Section-34. Recovery from offender. Whenever any person is convicted of an offense that includes any crime enumerated in section ...-31 and an order or the payment of compensation is or has been made under this part for injury or death resulting from the act or omission constituting such offense, the commission may institute a derivative action against such person and against any person liable at law on his behalf, in the name of the victim or such of his dependents as have been awarded compensation under this part in the circuit court of the circuit in which any such person resides or is found, for such damages as may be recoverable at common law by the victim or such dependents without reference to the payment of compensation under this part. Such court shall have jurisdiction to hear, determine, and render judgment in any such action. The time from the occurrence of such act or omission until conviction of such offense and, thereafter, as long as the offender is in confinement for conviction of such offense, shall not constitute any part of the time limited for the commencement of such action by the commission under the applicable statute of limitations. Any recovery in such

action shall belong to the State, provided that the commission shall amend its order of compensation to provide for the payment of any portion of the recovery in excess of the amount of compensation prescribed in such order to any of the persons entitled to receive compensation under section . . .-30 in such proportions and upon such terms as the commission shall deem appropriate. If the legislature fails to appropriate funds to pay all or any part of the award of payment made by the commission and there is a recovery of money from the offender, the commission shall pay all of such recovery to the claimant or such portion thereof, to the claimant as to the commission appears just and equitable, but in no case shall any claimant be given an award in excess of both the recovery and the award.

PART IV. COMPENSATION TO PRIVATE CITIZENS

Section-40. Eligibility for compensation. In the event a private citizen incurs injury or property damage in preventing the commission of a crime within the State, in apprehending a person who has committed a crime within the State, or in materially assisting a peace officer who is engaged in the prevention or attempted prevention of such a crime or the apprehension or attempted apprehension of such a person, the commission may, in its discretion, upon an application, order the payment of compensation in accordance with the provisions of this chapter:

- (1) to or for the benefit of the private citizen; or
- (2) to any person responsible for the maintenance of the private citizen, where that person has suffered pecuniary loss or incurred expenses as a result of the private citizen's injury.

Section-41. Award of compensation. The commission may order the payment of compensation under this part for:

- (1) expenses actually and reasonably incurred as a result of the injury of the private citizen;
- (2) pain and suffering to the private citizen;
- (3) loss to the private citizen of earning power as a result of total or partial incapacity; and
- (4) pecuniary loss to the private citizen directly resulting from damage to his property.

PART V. GENERAL PROVISIONS

Section-50. Terms of order. Except as otherwise provided in this Act, any order for the payment of compensation under this chapter may be made on such terms as the commission deems appropriate. Without limiting the generality of the preceding sentence, the order may provide for apportionment of the compensation, for the holding of the compensation or any part thereof in trust, and for the payment of the compensation in a lump sum or periodic installments. All such orders shall contain words clearly informing the claimant that all awards and orders for payments under this Act are subject to the making of an appropriation by the legislature to pay the claim.

Section-51. Limitations upon award of compensation. (a) No order for the payment of compensation shall be made under this chapter

unless the application has been made within eighteen months after the date of injury, death or property damage.

(b) No compensation shall be awarded under this chapter in an amount in excess of \$10,000.

Section -----52. Recovery from collateral source. (a) The commission shall deduct from any compensation awarded under this chapter any payments received from the offender or from any person on behalf of the offender, or from the United States, a state, or any of its subdivisions, or any agency of any of the foregoing, for injury or death compensable under this chapter.

(b) Where compensation is awarded under this chapter and the person receiving same also receives any sum required to be, and that has not been, deducted under subsection (a), he shall refund to the State the lesser of said sum or the amount of the compensation paid to him under this chapter.

Section -----53. No double recovery. Application may be made by any eligible person for compensation under both parts III and IV of this chapter, but no order shall have the effect of compensating any person more than once for any loss, expense or other matter compensable under this chapter.

Section -----54. Legal adviser. The attorney general shall serve as legal adviser to the commission.

Section -----55. Exemption from execution. No compensation payable under this chapter shall, prior to actual receipt thereof by the person or beneficiary entitled thereto, or their legal representatives, be assignable or subject to execution, garnishment, attachment or other process whatsoever, including process to satisfy an order or judgment for support or alimony.

Section -----56. Survival and abatement. The rights to compensation created by this chapter are personal and shall not survive the death of the person or beneficiary entitled thereto, provided that if such death occurs after an application for compensation has been filed with the commission, the proceeding shall not abate, but may be continued by the legal representative of the decedent's estate.

Section -----57. Rule-making powers. In the performance of its functions, the commission is authorized to adopt, amend and repeal rules and regulations, not inconsistent with the provisions of this chapter, prescribing the procedures to be followed in the filing of applications and the proceedings under this chapter and such other matters as the commission deems appropriate.

Section -----58. Commission staff. Supervisory, administrative and clerical personnel necessary for the efficient functioning of the commission shall be appointed as provided in section 14A-4.

Section -----59. Annual report. The commission shall transmit annually to the governor and to the director of finance, at least thirty days prior to the convening of the legislature a report of its activities under this chapter

including the name of each applicant, a brief description of the facts in each case, and the amount, if any, of compensation awarded. The director of finance shall, within five days after the opening of the legislative session, transmit such report, together with a tabulation of the total amount of compensation awarded, to the Committee on Ways and Means of the Senate and the Committee on Appropriations of the House of Representatives (or any successor committee). The funds necessary to pay the compensation awarded shall be appropriated in the same manner as payment of other claims for legislative relief sought pursuant to section 35-6. Compliance with this section shall be deemed compliance with section 35-6.”

SECTION 2. This Act shall take effect on July 1, 1967.
(Approved June 6, 1967.)