

AN ACT

ENTITLED, An Act to transfer victim services from the Department of Social Services to the Department of Public Safety, to increase a surcharge to increase revenues to the crime victims' compensation fund, and to revise certain provisions regarding the awarding of claims from the fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 23A-28B-1 be amended to read:

23A-28B-1. Terms used in this chapter mean:

- (1) "Claimant," any person entitled to apply for compensation pursuant to this chapter;
- (2) "Commission," the South Dakota Crime Victims' Compensation Commission as established by § 23A-28B-3;
- (3) "Crime," conduct that occurs or is attempted in this state, including that arising from domestic violence and acts of terrorism, as defined in 18 USC § 2331 as of January 1, 1997, which conduct results in personal injury or death and is punishable as a felony or misdemeanor, or would be so punishable except that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. However, the term does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, boat, or aircraft unless the conduct was intended to cause or did recklessly cause personal injury or death or unless the conduct constitutes a violation of § 32-23-1, 22-16-41, or 22-18-36;
- (4) "Department," Department of Public Safety;
- (5) "Dependent," any spouse, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of the spouse of a deceased victim who was wholly or partially dependent upon the victim's income at the time of the

- victim's death, including any child of the victim born after the victim's death;
- (6) "Economic loss," medical and hospital expenses, loss of earnings, loss of future earnings, funeral and burial expenses, homicide scene cleanup expenses, limited personal property losses, mileage, security devices, and loss of economic benefits or support to dependents, including home maintenance and child care expenses;
  - (7) "Fund," the crime victims' compensation fund established by § 23A-28B-40;
  - (8) "Law enforcement officer," any person as defined in § 22-1-2;
  - (9) "Medical expense," the cost of all medical and dental services, mental health counseling, dental and prosthetic devices, eyeglasses or other corrective lenses, including services rendered in accordance with any method of healing recognized by the laws of this state or the United States;
  - (10) "Person," any natural person;
  - (11) "Personal injury," actual bodily harm or emotional distress;
  - (12) "Victim," any person who suffers personal injury or death as a direct result of:
    - (a) A crime, including a federal crime occurring in this state;
    - (b) A good faith effort by the person to prevent the commission of a crime; or
    - (c) A good faith effort by the person to apprehend a person suspected of engaging in a crime;
  - (13) "Homicide scene cleanup expenses," the cost of cleaning the scene of a homicide, if the scene is a residence or an automobile, including removing, or attempting to remove, from the crime scene, blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. Compensation may be paid for services provided by persons who are not members of the immediate family of the victim, including the victim's spouse, parents, siblings and children, or persons who were not living with the victim at the time of the

crime;

- (14) "Personal Property losses," the replacement value of property, including clothing and bedding, used for evidentiary purposes;
- (15) "Security devices," the cost to repair or install locks, door eyeholes, security lights, or other similar security and safety measures necessary to ensure the safety of the victim.

Section 2. That § 23A-28B-25 be amended to read:

23A-28B-25. No claim for compensation may be awarded:

- (1) Unless an application for compensation is filed with the department within one year after the date of the personal injury or death and the personal injury or death was the result of a crime which had been reported to a law enforcement officer or agency within five days of its occurrence or, if the crime could not reasonably have been reported within that period, within five days of the date when a report could reasonably have been made. The department may waive the one year application requirement for good cause shown;
- (2) If the victim:
  - (a) Engaged in conduct which substantially contributed to the infliction of the victim's injury or death or engaged in conduct which the victim should reasonably have foreseen could lead to the injury or death. However, this subsection does not apply to any victim defined in subsections 23A-28B-1(12)(b) and (c) or to any victim of: a sex offense under chapter 22-22; human trafficking under chapter 22-49; domestic abuse under § 25-10-1; child abuse, neglect, or exploitation under § 26-8A-2; or abuse, neglect, or exploitation of an elder or an adult with a disability under chapter 22-46;
  - (b) Committed or otherwise participated in a crime which caused or contributed to the victim's injury or death;

(c) Fails or refuses to cooperate fully with any appropriate law enforcement officer or agency or with the department in the administration of this chapter. If a claimant other than a victim fails or refuses to cooperate pursuant to this subsection, no compensation may be awarded to that claimant; or

(3) To any claimant, if the award would unjustly benefit an offender or an accomplice.

Section 3. That § 1-36-35 be amended to read:

1-36-35. There is hereby created the Visitation Grant Advisory Group to allocate funds received by the Department of Public Safety through Part D of Title IV (U.S.C. 651-669). The advisory group shall be composed of three circuit court judges appointed by the Chief Justice of the Supreme Court, two members in good standing of the South Dakota Bar Association with experience in the law of domestic relations, custody, and visitation appointed by the Governor, two at large members appointed by the Governor, and two legislators, one appointed by the speaker of the House of Representatives and one appointed by the president pro tempore of the Senate. The terms of the members of the first advisory group shall be:

- (1) One-third selected for one-year terms;
- (2) One-third selected for two-year terms; and
- (3) One-third selected for three-year terms.

The term of each appointment to the advisory group is three years. No member may serve more than two consecutive three-year terms. The members may elect a chair from among the members. The advisory group shall be staffed by the Department of Public Safety.

Section 4. That § 25-10-30 be amended to read:

25-10-30. The Department of Public Safety shall promulgate rules pursuant to chapter 1-26 to:

- (1) Establish minimum qualifications of sexual assault or domestic violence shelters or service programs; and

- (2) Evaluate the programs and services provided by sexual assault or domestic violence shelters or service programs.

Section 5. That § 23A-28B-44 be amended to read:

23A-28B-44. No award of compensation may be made for a crime that occurs before July 1, 1992.

Section 6. That § 23A-28B-42 be amended to read:

23A-28B-42. In any criminal action for a violation of state law or county or municipal ordinance, in addition to any other liquidated cost, penalty, assessment, surcharge, or fine provided by law, there shall be levied a crime victims' compensation surcharge on each Class 2 misdemeanor, Class 1 misdemeanor, or felony conviction of five dollars.

However, the surcharge imposed by this section does not apply to violations relating to parking of vehicles. In a case of clear financial hardship when a fine is suspended in whole or in part, the surcharge provided for in this section may be waived.

Section 7. That § 23A-28B-43 be amended to read:

23A-28B-43. The clerk of courts of each county shall collect any surcharge levied under § 23A-28B-42 and shall transmit the collected surcharges within thirty days to the state treasurer who shall place the money received in the crime victims' compensation fund. For administration of surcharge collection, the Unified Judicial System shall receive one and one half percent of the surcharge funds collected, to be deposited in the court automation fund. The department shall receive thirteen and one half percent of surcharge funds collected for costs associated with administering claims and for providing administrative services to the commission. Any expenditures authorized from the fund shall be paid on warrants drawn by the state auditor on vouchers approved by the secretary of the department.

Section 8. That § 23A-28B-25 be amended to read:

23A-28B-25. No claim for compensation may be awarded:

- (1) Unless an application for compensation is filed with the department within one year after the date of the personal injury or death and the personal injury or death was the result of a crime which had been reported to a law enforcement officer or agency within five days of its occurrence or, if the crime could not reasonably have been reported within such period, within five days of the date when a report could reasonably have been made. The department may waive the one year application requirement for good cause shown;
- (2) If the victim:
  - (a) Engaged in conduct which substantially contributed to the infliction of the victim's injury or death or engaged in conduct which the victim should reasonably have foreseen could lead to the injury or death. However, this subsection does not apply to any victim defined in subsections 23A-28B-1(12)(b) and (c) or to any victim of: a sex offense under chapter 22-22; human trafficking under chapter 22-49; domestic abuse under § 25-10-1; child abuse, neglect, or exploitation under § 26-8A-2; or abuse, neglect, or exploitation of an elder or an adult with a disability under chapter 22-46;
  - (b) Committed or otherwise participated in a crime which caused or contributed to the victim's injury or death;
  - (c) Fails or refuses to cooperate fully with any appropriate law enforcement officer or agency or with the department in the administration of this chapter. If a claimant other than a victim fails or refuses to cooperate pursuant to this subsection, no compensation may be awarded to that claimant; or
- (3) To any claimant, if the award would unjustly benefit an offender or an accomplice.

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1160

\_\_\_\_\_  
Chief Clerk
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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1160  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office
this \_\_\_\_ day of \_\_\_\_\_ ,
20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor
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The attached Act is hereby
approved this \_\_\_\_\_ day of
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State