

*Recessing 4/17*

SENATE FILE 246

Judiciary  
Glenn, Chairperson  
Scott  
Ramsey  
Shaw  
Rush

FILED MAR 16 1977

SENATE FILE 246

By BISENIUS and SCHWENGELS

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

## A BILL FOR

1 An Act providing for compensation of victims of certain  
2 violent crimes and providing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

*S.F. 246*

1 Section 1. NEW SECTION. LEGISLATIVE INTENT. The general  
2 assembly declares that it serves a public purpose and benefits  
3 the state to indemnify persons who are victims of crimes  
4 committed within the state. Therefore, the declared purpose  
5 of this Act is to promote the public welfare by establishing  
6 a means of meeting the additional hardships imposed upon  
7 innocent victims of certain crimes and upon the families and  
8 dependents of those victims.

9 Sec. 2. NEW SECTION. DEFINITIONS. For purposes of this  
10 Act, unless a different meaning is clearly indicated by the  
11 context:

12 1. "Board" means the violent crimes compensation board  
13 as established by this Act.

14 2. "Child" means an unmarried person who is under eighteen  
15 years of age. Child includes the stepchild and adopted child  
16 of the victim and a child conceived prior to, but born after,  
17 the personal injury or death of the victim.

18 3. "Crime" means murder, manslaughter, kidnapping, sexual  
19 abuse, robbery, arson, burglary, felonious assault, or riot  
20 which was committed in this state after January 1, 1978.

21 4. "Dependent" means a person wholly or substantially  
22 dependent upon the income of the victim at the time of the  
23 victim's death. Dependent includes a person who would have  
24 been wholly or substantially dependent upon the income of  
25 the victim at the time of the victim's death but for the  
26 incapacity of the victim due to the injury or injuries from  
27 which his or her death resulted. Dependent includes a child  
28 conceived prior to, but born after, the victim's death.

29 5. "Guardian" means a person who is entitled by law or  
30 legal appointment to care for and manage the person or property  
31 or both of a child or incompetent.

32 6. "Incompetent" means a person who is incapable of  
33 managing his or her own affairs as determined by the board  
34 or by a court of competent jurisdiction.

35 7. "Personal injury" means bodily harm or extreme mental

1 suffering and shall include pregnancy of the victim.

2 8. "Pecuniary loss" in instances of personal injury  
3 includes medical expenses, including psychiatric care;  
4 nonmedical remedial care and treatment rendered in accordance  
5 with a religious method of healing; hospital expenses; loss  
6 of past earnings; and loss of future earnings because of a  
7 disability resulting from the personal injury. Pecuniary  
8 loss in instances of death of the victim includes funeral  
9 and burial expenses and loss of support to the dependents  
10 of the victim. Pecuniary loss includes other expenses actually  
11 and necessarily incurred as a result of the personal injury  
12 or death, but it does not include property damage.

13 9. "Victim" means a person who is injured or killed by  
14 the act of another person during the commission of a crime.

15 Sec. 3. NEW SECTION. VIOLENT CRIMES COMPENSATION BOARD.

16 There is hereby established a board to be known as the violent  
17 crimes compensation board which shall have sole jurisdiction  
18 over the awarding of compensation for victims of crimes under  
19 this Act. The board shall be composed of five members to  
20 be appointed by the governor with consent of the senate.  
21 No more than three members shall be of one major political  
22 party. The initial chairman of the board shall be appointed  
23 by the governor to serve as chairman for one year. Each year  
24 thereafter the board shall choose its chairman. Three members  
25 shall constitute a quorum for all hearings and business,  
26 except one member shall constitute a quorum for a hearing  
27 where the claimant has requested no more than five hundred  
28 dollars compensation.

29 The term of office of each member of the board shall be  
30 three years; provided, however, that one of the members first  
31 appointed shall be appointed for a term of one year, two  
32 others for a term of two years each, and the remainder of  
33 the members for a full term of three years. The compensation  
34 of the chairman shall be two thousand five hundred dollars  
35 annually, and the compensation of the members shall be two

1 thousand dollars annually.

2 Sec. 4. NEW SECTION. FUNCTIONS, POWERS, AND DUTIES.

3 The board shall have the following functions, powers, and  
4 duties:

5 1. To meet and function at any place within the state.

6 2. To appoint an executive secretary and other necessary  
7 employees the total number of which shall not exceed five  
8 at any given time. The board shall prescribe the duties of  
9 the executive secretary and other employees.

10 3. To utilize the services of other governmental agencies  
11 upon request when necessary.

12 4. To adopt, promulgate, amend, and rescind rules required  
13 to carry out this Act pursuant to chapter seventeen A (17A)  
14 of the Code.

15 5. To receive, investigate, and act upon applications  
16 for compensation filed pursuant to this Act.

17 6. To publish reports, information, and other data  
18 collected by the board as results of its investigations and  
19 research.

20 7. To provide compensation claim forms for purposes of  
21 this Act.

22 Sec. 5. NEW SECTION. ELIGIBILITY FOR FILING A CLAIM.

23 When a person is injured or killed during or as a result of  
24 commission of a crime, that person or his or her estate may  
25 file a claim with the violent crimes compensation board for  
26 compensation of all pecuniary loss which is a direct result  
27 of that crime.

28 Sec. 6. NEW SECTION. AMOUNT OF AWARD--APPEAL TO THE  
29 DISTRICT COURT.

30 1. If a claim is approved as filed, the award shall be  
31 the amount of pecuniary loss actually and reasonably sustained  
32 by reason of the personal injury in question minus the amount  
33 the claimant has or will receive as compensation from any  
34 other source.

35 2. In the event of death caused by a crime, a person who

1 legally or voluntarily assumes the obligation to pay the  
2 medical or burial expenses incurred as a direct result of  
3 the injury and death shall be eligible to file a claim with  
4 the board. This provision for payment in case of death shall  
5 not apply to an insurer or public entity.

6 3. The board is not compelled to provide compensation  
7 in any case or compelled to award the full amount claimed.  
8 The board may make its award of compensation dependent upon  
9 a condition or conditions as it deems desirable. A claimant  
10 who is aggrieved by the board's decision concerning  
11 compensation or any conditions attached to the award of  
12 compensation may appeal to the district court within thirty  
13 days of the board's decision. An appeal to the district court  
14 shall be on the record.

15 4. Compensation may be awarded at the board's discretion  
16 whether or not the alleged perpetrator of the crime is  
17 prosecuted or convicted. Compensation may be awarded whether  
18 or not the person committing the crime intended the act.

19 5. Upon the board's determination of the amount of  
20 compensation due, it shall issue to the treasurer of state  
21 a statement signed by the chairman certifying that amount.  
22 Upon receipt of the certification, the treasurer shall pay  
23 to the person named therein the specified amount under any  
24 specified conditions. The treasurer shall make no payments  
25 until the time for appeal of the certification has passed  
26 unless the claimant has waived his or her right to appeal  
27 in writing. If an appeal is taken, there shall be no payment  
28 until there has been a final adjudication of the matter.

29 Sec. 7. NEW SECTION. DENIAL OF CLAIM--REDUCTION OF CLAIM.

30 1. The board shall deny payment of a claim under any of  
31 the following circumstances:

32 a. Where the claimant was the perpetrator of the crime  
33 on which the claim is based.

34 b. Where the claimant incurred the personal injury on  
35 which the claim is based through collusion with the perpetrator

1 of the crime.

2 c. Where the claimant refused to give reasonable  
3 cooperation to state or local law enforcement agencies in  
4 their efforts to apprehend or convict the perpetrator of the  
5 crime on which the claim is based.

6 d. Where the claim has not been filed within one year  
7 after the personal injury on which the claim is based unless,  
8 an extension is granted by the board for good cause.

9 2. In determining whether or not to make an award or in  
10 determining the amount of an award, the board may consider  
11 any circumstances it deems relevant, including the behavior  
12 of the victim which directly or indirectly contributed to  
13 his or her injury or death unless the injury or death resulted  
14 from the victim's lawful attempt to prevent the commission  
15 of a crime or to apprehend perpetrator of a crime.

16 3. If the victim shares responsibility for his or her  
17 injury or death, the board shall reduce the amount of  
18 compensation in accordance with its assessment of the degree  
19 of responsibility attributable to the victim. A claim may  
20 be denied or reduced if the victim of the personal injury  
21 in question substantially provoked or aggravated the incident  
22 giving rise to the injury either through negligence, willful,  
23 or unlawful conduct.

24 Sec. 8. NEW SECTION. PAYMENT OF COMPENSATION.

25 1. Any person, regardless of age or mental condition,  
26 is entitled to make application for compensation under this  
27 Act if he or she is a victim. Where the person entitled to  
28 make application is deemed by law to be incompetent, he or  
29 she may nevertheless appear in person, or the application  
30 may be made on his or her behalf by any person acting as a  
31 relative, guardian, or attorney. Every victim making  
32 application shall be entitled to appear and be heard by the  
33 board.

34 2. Except in cases of dire hardship, as determined by  
35 the board, there shall be no payment of compensation where

1 the claim is for less than twenty-five dollars. Awards may  
2 be paid in a lump sum or in periodic payments as determined  
3 by the board.

4 3. The board may require an injured person filing a claim  
5 pursuant to this Act to submit to a physical or mental  
6 examination by a physician or physicians selected by the  
7 board.

8 4. Compensation shall not be awarded to an individual  
9 victim (or in case of the victim's death, to dependent  
10 relatives or to the victim's legal representative) in a total  
11 amount in excess of ten thousand dollars. The board shall  
12 deduct payments received by the victim or by any of the  
13 victim's dependents from the offender or from a person on  
14 behalf of the offender from an insurer, the United States,  
15 the state, or any state or its subdivisions from its award  
16 of compensation if the payments were in any manner made to  
17 compensate the person for personal injury or death arising  
18 from the same incident.

19 5. Although a person otherwise incompetent may appear  
20 and press his or her claim before the board, payment of  
21 compensation shall not be made directly to a person legally  
22 incompetent to receive it but shall be made to a third person  
23 for the benefit of the incompetent. In the case of a payment  
24 for the benefit of a child or incompetent, the board shall  
25 order the payee to file an accounting with the board no later  
26 than January thirty-first of each year for the previous  
27 calendar year and to take other action the board determines  
28 necessary and appropriate for the benefit of the child or  
29 incompetent.

30 Sec. 9. NEW SECTION. FORM OF CLAIM--INVESTIGATION.

31 1. All claims filed with the board shall be written and  
32 verified, shall accurately describe the crime and cir-  
33 cumstances which brought about the injury or death, shall  
34 state the time and place the injury occurred, shall state  
35 the names of all persons involved, if known, and shall con-

1 tain the amount claimed by the applicant. If the board in  
2 its discretion decides that a claim should be investigated,  
3 the investigation must be initiated within thirty days of  
4 the filing of the claim. A claim may be summarily denied  
5 if it does not contain a full statement of the information  
6 required. If no investigation is initiated, the board shall,  
7 within the thirty-day period, notify the applicant to appear  
8 and meet with the members of the board.

9 2. If there is doubt concerning the existence or nonex-  
10 istence of a material fact, the board shall conduct its own  
11 investigation and shall fix the time and place for a hearing  
12 on the claim when the investigation is completed. The board  
13 shall mail notices of the time and place of the hearing to  
14 all interested persons and agencies. Within ninety days of  
15 the conclusion of all hearings on the matter, the board shall  
16 mail a statement of its decision to award or deny the claim  
17 and a statement of any conditions under which the claim shall  
18 be awarded to the claimant.

19 Sec. 10. NEW SECTION. ATTORNEY FEES. A claimant need  
20 not be represented by an attorney before the board, but if  
21 the claimant is represented, the board may award an amount  
22 for attorney services rendered. This fee shall not exceed  
23 one thousand dollars or fifteen percent of the amount awarded,  
24 whichever is less, and shall be in addition to the amount  
25 of compensation awarded to the claimant. An attorney shall  
26 not charge, demand, receive, or collect for services rendered  
27 in connection with a proceeding under this Act an amount other  
28 than awarded as attorney fees under this section.

29 Sec. 11. NEW SECTION. RECOVERY FROM THE CRIMINAL.

30 1. When a person is convicted of a public offense and  
31 a payment of compensation is or has been made under this Act  
32 for a personal injury or death resulting from the act consti-  
33 tuting the offense, the state may institute an action against  
34 the convicted person for the recovery of all or a specified  
35 part of the compensation in a state court if the court has

1 custody or control of funds of the criminal or which may be  
2 awarded to the criminal. Money recovered under this section  
3 shall be deposited to the fund which finances the  
4 administration of this Act.

5 2. A payment of compensation under this Act shall not  
6 affect any right of a person to recover damages in a civil  
7 action from the person or persons convicted of the crime  
8 giving rise to the claim for compensation.

9 Sec. 12. NEW SECTION. ASSIGNMENT AND SUBROGATION.

10 1. Awards and recoveries granted under this Act shall  
11 not be transferable or assignable, and none of the money paid  
12 or payable under this Act shall be subject to execution, levy,  
13 attachment, garnishment, or other legal process, or be subject  
14 to the operation of any bankruptcy law.

15 2. There shall be no substitution or subrogation of an  
16 indebtedness or right of action by virtue of claim of guarantee  
17 or surety, agency, lien, payments, or advances made, or a  
18 claim made by the person convicted of the act giving rise  
19 to compensation awarded under this Act.

20 Sec. 13. NEW SECTION. PENALTY ASSESSMENT.

21 1. In addition to and at the same time as a fine is as-  
22 sessed a convicted criminal, there shall be levied an ad-  
23 ditional penalty of twenty-five percent of every fine imposed  
24 by the courts for criminal offenses. Where multiple offenses  
25 are involved, the penalty assessment shall be based upon the  
26 total fine for all offenses. When a fine is suspended in  
27 whole or in part, the penalty assessment shall not be  
28 suspended.

29 2. Upon collection of the penalty assessment, it shall  
30 be paid over to the clerk of court who shall transmit it to  
31 the state treasury to be deposited in a separate account  
32 which is hereby created for the administration of this Act.  
33 The account shall be designated the "victim compensation  
34 fund."

35 Sec. 14. NEW SECTION. COMPENSATING PENALTY. In any court

1 of the state upon the conviction of a person for a crime  
2 resulting in the personal injury or death of another person,  
3 the court may, in addition to any other penalty, order the  
4 person to pay a compensating fine in lieu of but greater than  
5 the penalty set forth in section thirteen (13) of this Act.  
6 The amount of this fine shall be in the discretion of the  
7 court and shall be commensurate with the malice shown and  
8 the injury done to the victim. All fines paid in accordance  
9 with this section shall be deposited into the victim  
10 compensation fund.

11 Sec. 15. NEW SECTION. ANNUAL REPORTS. The board shall  
12 transmit to the governor, auditor of state, and general as-  
13 ssembly a written annual report of its activities under this  
14 Act and recommendations, including the name of each applicant  
15 for compensation, the amount claimed, and the amount of  
16 compensation awarded.

17 Sec. 16. NEW SECTION. OATHS--TESTIMONY--PRODUCTION OF  
18 RECORDS. The board, each member of the board, and the  
19 executive secretary shall have the power to administer oaths,  
20 subpoena witnesses, and compel the production of books, papers,  
21 and records relevant to an investigation or hearing authorized  
22 by this Act. A person who fails to appear in response to  
23 a subpoena or fails to answer any question or to produce any  
24 books, papers, and records relevant to the investigation or  
25 hearing, may be compelled to do so by court order.

26 Sec. 17. NEW SECTION. FILING FALSE CLAIM.

27 1. A person who knowingly files a claim for compensation  
28 under this Act which is false in whole or in part shall be  
29 guilty of a fraudulent practice.

30 2. A person who knowingly files a false claim for com-  
31 pensation under this Act shall forfeit any compensation and  
32 shall repay the board for any compensation received but not  
33 forfeited.

34 Sec. 18. This Act is effective on the date set forth in  
35 chapter one thousand two hundred forty-five (1245), Acts of

1 the Sixty-sixth General Assembly, 1976 Session, chapter four  
2 (4), section five hundred twenty-nine (529).

3

EXPLANATION

4 This bill provides for compensating victims of murder,  
5 manslaughter, kidnapping, sexual abuse, robbery, arson,  
6 burglary, felonious assault, or riot committed in Iowa after  
7 January 1, 1978 for pecuniary loss sustained. The minimum  
8 claim would be for \$25; the maximum award would be for \$10,000.  
9 Claims would be handled by a five-member Violent Claims  
10 Compensation Board. The bill closely follows the Delaware  
11 victim compensation law.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35