

Chapter 67
VIOLENT CRIMES COMPENSATION BOARD

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Sec. 18.67.010. PURPOSE.

It is the purpose of this chapter to facilitate and permit the payment of compensation to innocent persons injured, to dependents of persons killed, and to certain other persons who by virtue of their relationship to the victim of a crime incur actual and reasonable expense as a result of certain serious crimes or in attempts to prevent the commission of crime or to apprehend suspected criminals.

Sec. 18.67.020. VIOLENT CRIMES COMPENSATION BOARD.

(a) The Violent Crimes Compensation Board is composed of three members to be appointed by the governor. One of the members shall be designated as chairman by the governor. One of the members shall be designated as chair by the governor. At least one member must be a medical or osteopathic physician, a physician assistant, or an advanced nurse practitioner licensed to practice in this state or retired from practice in this state, and one member must be an attorney licensed to practice in this state or retired from practice in this state.

(b) Members of the board serve staggered terms of three years. All vacancies, except through the expiration of term, shall be filled for the unexpired term only.

(c) Each member of the board is eligible for reappointment and serves at the pleasure of the governor.

(d) A member of the board may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office after due notice and hearing.

(e) Members of the board receive no salary, but are entitled to per diem and travel expenses authorized by law for other boards.

(f) After obtaining consent from the chief administrative law judge (AS 44.64.020), the board may appoint one or more administrative law judges employed or retained by the office of administrative hearings to conduct hearings and take testimony in proceedings under this chapter, but final determinations of any matter shall be only by the board. AS 44.64.060 and 44.64.070 to not apply to proceedings under this chapter. An administrative law judge acting under this section shall report findings of fact and conclusions of law to the

board, together with the reasons for the findings and conclusions. The board shall act only after consideration of the report and other evidence that it considers appropriate.

(g) The board may appoint and fix the duties of personnel necessary for carrying out its functions under this chapter.

Sec. 18.67.030. APPLICATION FOR COMPENSATION.

(a) A person who may be eligible for compensation under this chapter may make application to the board. In a case in which the person entitled to make application is a minor, the application may be made on the person's behalf by a parent or guardian. In a case in which the person entitled to make application is mentally incompetent, the application may be made on the person's behalf by a parent, guardian, or other individual authorized to administer the person's estate.

(b) In order to be eligible for compensation under this chapter, the applicant shall, before a hearing on an application under this chapter, submit reports, if reasonably available, from all physicians or surgeons who have treated or examined the victim in relation to the injury for which compensation is claimed at the time of or subsequent to the victim's injury or death. If, in the opinion of the board, reports on the previous medical history of the victim, a report on the examination of the injured victim, or a report on the cause of death of the victim by an impartial medical expert would be of material aid to its determination, the board shall order the reports and examination.

(c) An application for compensation and personally identifying information relating to an applicant for compensation are confidential records and may not be released by the board.

Sec. 18.67.040. ACTION ON APPLICATION; HEARINGS.

(a) Upon application made under the provisions of this chapter, the board shall consider the application and rule on it. The board may, upon its own motion, order a hearing, specifying the time and place it is to be held; if a hearing is ordered, the board shall give notice to the applicant. If, after consideration without a hearing, the decision is unfavorable to the applicant, in whole or in part, the board shall furnish the applicant a written statement of the reason for the ruling. If, within 30 days after receipt of this statement, the applicant requests a hearing on the application, the board shall specify a time and place for a hearing and shall give notice to the applicant. If a request for a hearing is not made within the specified time, the decision of the board is final.

(b) For the purpose of carrying out the provisions of this chapter, the board or its hearing officer may hold the hearings, sit and act at the times and places, and take the testimony that the board or the hearing officer considers advisable. The board or its hearing officer may administer oaths or affirmations to witnesses. The board has full powers of subpoena and compulsion of attendance of witnesses and production of documents, but a subpoena may not be issued except under the signature of a member of the board. Application to a court for aid in enforcing the subpoena may be made in the name of the board only by a board member. Subpoenas are served by any person designated by the board.

(c) The applicant and any other person having a substantial interest in a proceeding may appear and be heard, produce evidence, and cross-examine witnesses in person or by an attorney. The board or its hearing officer also may hear other persons who in the judgment of the board or the hearing officer may have relevant evidence to submit.

(d) Admissibility of evidence is governed by AS 44.62 (Administrative Procedure Act).

(e) If a person has been convicted of an offense with respect to an act on which a claim under this chapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or a proceeding with regard to it is pending.

(f) Orders and decisions of the board shall be final.

Sec. 18.67.050. ATTORNEY FEES.

The board may, as part of an order entered under this chapter, determine and allow reasonable attorney fees, which may not exceed 25 per cent of the first \$1,000 amount awarded as compensation, 15 per cent of the next \$9,000 amount awarded as compensation, and 7.5 per cent of the amount awarded as compensation over \$10,000 under AS 18.67.070, to be paid in addition to the amount of the compensation, to the attorney representing the applicant. An attorney may not ask for, contract for, charge, demand, collect, or receive a larger sum than the amount allowed by the board in the award of attorney fees. An attorney who violates this section shall forfeit any fee awarded and shall repay the state the fee awarded under this section.

Sec. 18.67.060. REGULATIONS.

In the performance of its functions, the board is authorized to make, rescind, and amend regulations prescribing the procedures to be followed in the filing of applications and in proceedings under this chapter, and relating to other matters the board considers appropriate.

Sec. 18.67.070. STANDARDS FOR COMPENSATION.

For the purpose of determining the amount of compensation payable under this chapter, the board shall, insofar as practicable, formulate standards for uniform application of this chapter and take into consideration rates and amounts of compensation payable for injuries and death under other laws of the state and of the United States and the availability of funds appropriated for the purposes of this chapter.

Sec. 18.67.080. AWARDING COMPENSATION.

(a) In a case in which a person is injured or killed by an incident specified in AS 18.67.101 (1), or by the act of any other person that is within the description of offenses listed in AS 18.67.101 (2), the board may order the payment of compensation in accordance with the provisions of this chapter:

(1) to or for the benefit of the injured person;

(2) in the case of personal injury or death of the victim, to a person responsible or who had been responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury or death;

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

(4) to the provider of a service under AS 18.67.110 (b).

(b) For the purposes of this chapter, a person is considered to have intended an act notwithstanding that by reason of age, insanity, drunkenness, or otherwise, the person was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the board shall consider all circumstances determined to be relevant, including provocation, consent, or any other behavior of the victim that directly or indirectly contributed to the victim's injury or death, the prior case or social history, if any, of the victim, the victim's need for financial aid, and any other relevant matters. In applying this subsection,

(1) the board may not deny an order based on the factors in this subsection, unless these factors relate significantly to the occurrence that caused the victimization and are of such a nature and quality that a reasonable or prudent person would know that the factors or actions could lead to the crime and the victimization;

(2) with regard to circumstances in which the victim consented to, provoked, or incited the criminal act, the board may consider those circumstances only if the board finds that it is more probable than not that those circumstances occurred and were the cause of the crime and the victimization;

(3) the board may deny an order based on the victim's involvement with illegal drugs only if

(A) the victim was involved in the manufacture or delivery of a controlled substance at the time of the crime or the crime and victimization was a direct result of the prior manufacture or delivery of a controlled substance; the evidence of this manufacture or delivery must be corroborated by law enforcement or other credible sources; and

(B) the evidence shows a direct correlation linking the illegal activity and the crime and victimization; or

(4) if a claim is based on a crime involving domestic violence or on a crime of sexual abuse of a minor or sexual assault and the offender is

(A) convicted of one of those crimes, notwithstanding (1)-(3) of this subsection, the board may not deny an order based on considerations of provocation, the use of alcohol or drugs by the victim, or the prior social history of the victim; or

(B) not convicted of one of those crimes, the board may not deny an order based on the involvement or behavior of the victim.

(d) An order may be made under this section whether or not a person is prosecuted or convicted of an offense arising out of the act that caused the injury or death involved in the application. Upon application made by an appropriate prosecuting authority, the board may suspend proceedings under this chapter for a period it considers appropriate on the ground that a prosecution for an offense arising out of the act that caused the injury or death involved in the application has been commenced or is imminent.

Sec. 18.67.090. RECOVERY FROM COLLATERAL SOURCE.

(a) Up to the maximum set in AS 18.67.130 (c), the board may award compensation for losses and expenses allowable under AS 18.67.110 for which the applicant is not compensated by the offender or a person on behalf of the offender, or by the United States, a state, or any of its subdivisions or agencies, or a private source or emergency awards under AS 18.67.120 , for injury or death compensable under this chapter.

(b) If compensation is awarded under this chapter and the person receiving it also receives a collateral sum under (a) of this section that has not been deducted from it, the board may require that the person refund either the amount of the collateral sum or the amount of compensation paid to the person under this chapter, whichever is less.

(c) Notwithstanding the provisions of (a) and (b) of this section, in the case of the death of a victim, the value of a life insurance policy may not be considered a collateral sum that may be deducted under this section.

Sec. 18.67.100. [Repealed, Sec. 6 ch 35 SLA 1979.]

Sec. 18.67.101. INCIDENTS AND OFFENSES TO WHICH THIS CHAPTER APPLIES.

The board may order the payment of compensation in accordance with the provisions of this chapter for personal injury or death that resulted from

(1) an attempt on the part of the applicant to prevent the commission of crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police officer to do so, or aiding a victim of crime; or

(2) the commission or attempt on the part of one other than the applicant to commit any of the following offenses:

(A) murder in any degree;

(B) manslaughter;

(C) criminally negligent homicide;

(D) assault in any degree;

(E) kidnapping;

(F) sexual assault in any degree;

(G) sexual abuse of a minor;

(H) robbery in any degree;

(I) threats to do bodily harm; or

(J) driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is under the influence of an alcoholic beverage, inhalant, or controlled substance; or

(K) arson in the first degree; or

(L) sex trafficking in violation of AS 11.66.110 or 11.66.130(a)(2);

(M) human trafficking in any degree; or

(N) unlawful exploitation of a minor.

Sec. 18.67.110. NATURE OF THE COMPENSATION.

(a) The board may order the payment of compensation under this chapter for

(1) expenses actually and reasonably incurred as a result of the personal injury or death of the victim;

(2) loss of earning power as a result of total or partial incapacity of the victim, and reasonable expenses of job retraining of or similar employment-oriented rehabilitative services for the victim;

(3) pecuniary loss to the dependents of the deceased victim; and

(4) any other loss resulting from the personal injury or death of the victim that the board determines to be reasonable.

(b) The board may order that compensation under (a) of this section for a service provided as a result of the personal injury or death of the victim be paid directly to the provider of the service.

Sec. 18.67.120. EMERGENCY COMPENSATION.

If it appears to the board, prior to taking action on an application, that the claim is one for which compensation is probable, and undue hardship will result to the applicant if immediate payment is not made, the board may make an emergency award of compensation to the applicant pending a final decision in the case. However,

(1) the amount of the emergency compensation may not exceed \$5,000;

(2) the amount of the emergency compensation shall be deducted from the final compensation made to the applicant;

(3) the excess of the amount of the emergency compensation over the final amount shall be repaid by the applicant to the board.

Sec. 18.67.130. LIMITATIONS ON AWARDING COMPENSATION.

(a) An order for the payment of compensation may not be made under AS 18.67.080 unless

(1) the application has been made within two years after the date of the personal injury or death;

(2) the personal injury or death was the result of an incident or offense listed in AS 18.67.101 that had been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within that period, within five days of the time when a report could reasonably have been made; and

(3) in the discretion of the board, the applicant has cooperated with law enforcement and prosecution officials to further prosecution of the offender if appropriate and to avoid further injury by the offender to the applicant and injury to persons in the care of the applicant who are exposed to possible injury by the offender.

(b) Compensation may not be awarded if the victim

(1) [Repealed, Sec. 8 ch 96 SLA 1983].

(2) [Repealed, Sec. 8 ch 96 SLA 1983].

(3) violated a penal law of the state, which violation caused or contributed to the victim's injuries or death; or

(4) is injured as a result of the operation of a motor vehicle, boat, or airplane unless the vehicle was used by the offender while intoxicated or as a weapon in a deliberate attempt to injure or kill the victim.

(c) Compensation may not be awarded under this chapter in an amount in excess of \$40,000 per victim per incident. However, in the case of the death of

(1) a victim who has more than one dependent eligible for compensation, the total compensation that may be awarded as a result of that death may not exceed \$80,000; the board may prorate the total awarded among those dependents according to relative need; or

(2) two or more victims in the same incident who jointly have a dependent eligible for compensation, the total compensation that may be awarded as a result of those deaths may not exceed \$80,000.

(d) Orders for payment of compensation under this chapter may be made only as to injuries or death resulting from incidents or offenses occurring on and after July 1, 1971.

Sec. 18.67.140. RECOVERY FROM OFFENDER.

When an order for the payment of compensation for personal injury or death is made under this chapter, the board, upon payment of the amount of the order, is subrogated to the cause of action of the applicant against the person responsible for the injury or death and is entitled to bring an action against the person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the order is recovered and collected in the action, the board shall pay the balance to the applicant.

Sec. 18.67.150. FALSE CLAIM.

A person who knowingly makes a false claim under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$500, or by imprisonment for not more than one year, or by both, and shall forfeit any benefit received and shall repay the state for payment of compensation made under this chapter.

Sec. 18.67.160. SURVIVAL AND ABATEMENT.

The rights to compensation created under this chapter are personal and do not survive the death of a victim or dependent entitled to them, except that if the death occurs after an application for compensation has been filed with the board, the proceeding does not abate, but may be continued by the legal representative of the decedent's estate.

Sec. 18.67.162. CRIME VICTIM COMPENSATION FUND.

There is created a crime victim compensation fund which shall be administered by the board. The fund consists of money appropriated to it by the legislature, which may include donations, recoveries of or reimbursements for awards made from the fund, income from the fund, and other program receipts from activities under this chapter. Appropriations to the fund do not lapse. The fund shall be administered in accordance with the provisions of this chapter. Money distributed from the fund shall be in addition to other sources of compensation provided in this chapter.

Sec. 18.67.165. DISTRIBUTION OF MONEY RECEIVED AS A RESULT OF THE COMMISSION OF CRIME.

[Repealed, Sec. 11 ch 154 SLA 1984. For current law see AS 12.61.020].

Sec. 18.67.170. REPORTS.

The board shall prepare and transmit to the governor, in each odd-numbered year, a biennial report of its activities under this chapter including a brief description of the facts in each case and the amount of compensation awarded during the preceding two-year period. The board shall notify the legislature that the report is available.

Sec. 18.67.175. DUTY TO DISPLAY INFORMATION.

(a) Every hospital licensed by this state shall display prominently in its emergency room, main entrance, and business office posters notifying the public of the existence and general provisions of this chapter. The board may set standards for the location of this display and shall provide posters and general information regarding the provisions of this chapter to each hospital and to each physician licensed to practice medicine in the state.

(b) Every law enforcement agency in the state shall inform victims of violent crimes, or their surviving dependents, of the provisions of this chapter and shall provide application forms to the victims, or their dependents, who desire to seek compensation under this chapter. The board shall provide application forms, all other documents and general information that law enforcement agencies may require to comply with this subsection.

Sec. 18.67.180. DEFINITIONS.

In this chapter,

- (1) "board" means the Violent Crimes Compensation Board;
- (2) "dependent" means a relative of a deceased victim who was dependent upon the victim's income or services at the time of the victim's death; children of a victim born after a victim's death are included;
- (3) "personal injury" means actual bodily harm;
- (4) "relative" means spouse, parent, grandparent, stepparent, natural born child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or spouse's parents;
- (5) "victim" means a person who is injured or killed by an incident or offense specified in AS 18.67.101 .