

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

493Z0689

SENATE STATE AFFAIRS

ENGROSSED NO. **HB 1160** - 3/5/2018

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Reed, Barthel, Chase, Glanzer, Goodwin, Holmes, Johns, Kettwig, Mickelson, and Schoenfish and Senators Bolin, Cronin, Haverly, Peters, and Tidemann

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

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

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

7 23A-28B-1. Terms used in this chapter mean:

- 8 (1) "Claimant," any person entitled to apply for compensation pursuant to this chapter;
- 9 (2) "Commission," the South Dakota Crime Victims' Compensation Commission as  
10 established by § 23A-28B-3;
- 11 (3) "Crime," conduct that occurs or is attempted in this state, including that arising from  
12 domestic violence and acts of terrorism, as defined in 18 USC § 2331 as of January  
13 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 ~~Social Services~~ 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 ~~such~~ that period, within five days of the date when a report could

1 reasonably have been made. The department may waive the one year application  
2 requirement for good cause shown;

3 (2) If the victim:

4 (a) Engaged in conduct which substantially contributed to the infliction of the  
5 victim's injury or death or engaged in conduct which the victim should  
6 reasonably have foreseen could lead to the injury or death. However, this  
7 subsection does not apply to any victim defined in subsections 23A-28B-  
8 1(12)(b) and (c) or to any victim of: a sex offense under chapter 22-22; human  
9 trafficking under chapter 22-49; domestic abuse under § 25-10-1; child abuse,  
10 neglect, or exploitation under § 26-8A-2; or abuse, neglect, or exploitation of  
11 an elder or an adult with a disability under chapter 22-46;

12 (b) Committed or otherwise participated in a crime which caused or contributed  
13 to the victim's injury or death;

14 (c) Fails or refuses to cooperate fully with any appropriate law enforcement  
15 officer or agency or with the department in the administration of this chapter.

16 If a claimant other than a victim fails or refuses to cooperate pursuant to this  
17 subsection, no compensation may be awarded to that claimant; or

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

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

20 1-36-35. There is hereby created the Visitation Grant Advisory Group to allocate funds  
21 received by the Department of ~~Social Services~~ Public Safety through Part D of Title IV (U.S.C.  
22 651-669). The advisory group shall be composed of three circuit court judges appointed by the  
23 Chief Justice of the Supreme Court, two members in good standing of the South Dakota Bar  
24 Association with experience in the law of domestic relations, custody, and visitation appointed

1 by the Governor, two at large members appointed by the Governor, and two legislators, one  
2 appointed by the speaker of the House of Representatives and one appointed by the president  
3 pro tempore of the Senate. The terms of the members of the first advisory group shall be:

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

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

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

12 25-10-30. The Department of ~~Social Services~~ Public Safety shall promulgate rules pursuant  
13 to chapter 1-26 to:

- 14 (1) Establish minimum qualifications of sexual assault or domestic violence shelters or  
15 service programs; and
- 16 (2) Evaluate the programs and services provided by sexual assault or domestic violence  
17 shelters or service programs.

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

19 23A-28B-44. ~~No application for compensation may be considered by the department or~~  
20 ~~commission until July 1, 1992.~~ No award of compensation may be made for a crime that occurs  
21 ~~prior to~~ before July 1, 1992.

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

23 23A-28B-42. In any criminal action for a violation of state law or county or municipal  
24 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 ~~two~~ five dollars ~~and fifty cents~~.

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 ~~such~~ the collected surcharges within thirty days to the state treasurer who shall place ~~such~~ the money received in the crime victims' compensation fund. For administration of surcharge collection, the Unified Judicial System shall receive ~~three~~ one and one half percent of the surcharge funds collected, to be deposited in the court automation fund. The department shall receive ~~twenty-seven~~ thirteen and one half percent of surcharge funds collected for costs associated with administering claims and for providing administrative services to the commission. ~~Such~~ 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;

1       (2)    If the victim:

2           (a)   Engaged in conduct which substantially contributed to the infliction of the  
3                victim's injury or death or engaged in conduct which the victim should  
4                reasonably have foreseen could lead to the injury or death. However, this  
5                subsection does not apply to any victim defined in subsections 23A-28B-  
6                1(12)(b) and (c) or to any victim of: a sex offense under chapter 22-22; human  
7                trafficking under chapter 22-49; domestic abuse under § 25-10-1; child abuse,  
8                neglect, or exploitation under § 26-8A-2; or abuse, neglect, or exploitation of  
9                an elder or an adult with a disability under chapter 22-46;

10          (b)   Committed or otherwise participated in a crime which caused or contributed  
11                to the victim's injury or death;

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

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