

1 IN THE SENATE

BY MILLER

2 SENATE BILL NO. 28

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a Violent Crimes Compensation  
7 Board; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 67. VIOLENT CRIMES COMPENSATION BOARD.

11 Sec. 18.67.010. PURPOSE. It is the purpose of this chapter to  
12 facilitate and permit the payment of compensation to innocent persons  
13 injured and to dependents of persons killed as a result of certain  
14 serious crimes or in attempts to prevent the commission of crime or to  
15 apprehend suspected criminals.

16 Sec. 18.67.020. CRIMINAL INJURIES COMPENSATION BOARD. (a) There  
17 is the Violent Crimes Compensation Board in the Department of Health  
18 and Welfare composed of three members to be appointed by the governor.  
19 One of the members shall be designated as chairman by the governor.  
20 At least one member shall be a medical or osteopathic physician  
21 licensed to practice in this state.

22 (b) The term of office of each member of the board is three years,  
23 except that of the members first appointed one shall be appointed for  
24 a term of three years, one for a term of two years, and one for a term  
25 of one year. All vacancies, except through the expiration of term,  
26 shall be filled for the unexpired term only.

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

29 (d) Each member of the board is eligible for reappointment

1 and any member of the board may be removed by the governor for in-  
2 efficiency, neglect of duty or malfeasance in office after due notice  
3 and hearing.

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

6 (f) The board may appoint one or more hearing officers, who must  
7 be licensed to practice law in the state, to conduct hearings and take  
8 testimony in proceedings under this chapter, but final determinations  
9 of any matter shall be only by the board. A hearing officer acting  
10 under this section shall report his findings of fact and conclusions of  
11 law to the board, together with the reasons for the findings and con-  
12 clusions. The board shall act only after consideration of the report  
13 and such other evidence as it considers appropriate.

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

16 Sec. 44:58.030. APPLICATION FOR COMPENSATION. (a) Any person  
17 who may be eligible for compensation under this chapter may make appli-  
18 cation to the board. In a case in which the person entitled to make  
19 application is a minor, the application may be made on his behalf by  
20 his parent or guardian. In a case in which the person entitled to make  
21 application is mentally incompetent, the application may be made on his  
22 behalf by his parent, guardian or other individual authorized to  
23 administer his estate.

24 (b) In order to be eligible for compensation under this chapter,  
25 the applicant shall, before a hearing on an application under this  
26 chapter, submit reports, if reasonably available, from all physicians  
27 or surgeons who have treated or examined the victim in relation to the  
28 injury for which compensation is claimed at the time of or subsequent to  
29 victim's injury or death. If, in the opinion of the board, reports on

1 the previous medical history of the victim, a report on the examination  
2 of the injured victim, or a report on the cause of death of the victim  
3 by an impartial medical expert would be of material aid to its deter-  
4 mination, the board shall order the reports and examination.

5 Sec. 44.58.040. HEARINGS. (a) Upon application made under the  
6 provisions of this chapter, the board shall fix a time and place for a  
7 hearing and shall give notice to the applicant.

8 (b) For the purpose of carrying out the provisions of this chap-  
9 ter, the board or its hearing officer may hold the hearings, sit and  
10 act at the times and places, and take the testimony that it or he con-  
11 siders advisable. The board or its hearing officer may administer oaths  
12 or affirmations to witnesses. The board has full powers of subpoena and  
13 compulsion of attendance of witnesses and production of documents, but  
14 no subpoena shall be issued except under the signature of a member of  
15 the board. Application to a court for aid in enforcing the subpoena  
16 may be made in the name of the board only by a board member. Subpoenas  
17 are served by any person designated by the board.

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

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

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

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

2 Sec. 44.58.050. ATTORNEY FEES. The board may, as part of an order  
3 entered under this chapter, determine and allow reasonable attorney  
4 fees, which shall not exceed 15 per cent of the amount awarded as  
5 compensation under sec. 70 of this chapter, to be paid out of but not  
6 in addition to the amount of the compensation, to the attorney repre-  
7 senting the applicant. It is unlawful for the attorney to ask for,  
8 contract for, or receive a larger sum than the amount allowed in the  
9 award.

10 Sec. 44.58.060. REGULATIONS. In the performance of its functions,  
11 the board is authorized to make, rescind and amend regulations pre-  
12 scribing the procedures to be followed in the filing of applications  
13 and proceedings under this chapter, and other matters the board con-  
14 siders appropriate.

15 Sec. 44.58.070. STANDARDS FOR COMPENSATION. For the purpose of  
16 determining the amount of compensation payable under this chapter, the  
17 board shall, insofar as practicable, formulate standards for uniform  
18 application of this chapter and take into consideration rates and  
19 amounts of compensation payable for injuries and death under other  
20 laws of the state and of the United States and the availability of funds  
21 appropriated for purposes of this chapter.

22 Sec. 44.58.080. AWARDED COMPENSATION. (a) In a case in which a  
23 person is injured or killed by an incident specified in sec. 90(1) of  
24 this chapter, or by any act of any other person which is within the  
25 description of offenses listed in sec. 90(2) of this chapter, the  
26 board may order the payment of compensation in accordance with the  
27 provisions of this chapter:

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

29 (2) in the case of personal injury of the victim, to any

1 person responsible for the maintenance of the victim who has suffered  
2 pecuniary loss or incurred expenses as a result of the injury; or

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

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

9 (c) In determining whether to make an order under this section,  
10 the board shall consider all circumstances determined to be relevant,  
11 including provocation, consent or any other behavior of the victim  
12 which directly or indirectly contributed to his injury or death; the  
13 prior case or social history, if any, of the victim; need for financial  
14 aid; and any other relevant matters.

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

23 Sec. 44.58.085. RECOVERY FROM COLLATERAL SOURCE. (a) The board  
24 shall deduct from any compensation awarded under this chapter any pay-  
25 ments received from the offender or from any person on behalf of the  
26 offender, or from the United States, a state, or any of its subdivisions  
27 or agencies, or any private source or any emergency awards under  
28 sec. 105 of this chapter, for injury or death compensable under this  
29 chapter.

1 (b) If compensation is awarded under this chapter and the person  
2 receiving it also receives a collateral sum under (a) of this section  
3 which has not been deducted from it, he shall refund to the board the  
4 lesser of the sums or the amount of compensation paid to him under this  
5 chapter.

6 Sec. 44.58.090. INCIDENTS AND OFFENSES TO WHICH CHAPTER APPLIES.  
7 The board may order the payment of compensation in accordance with the  
8 provisions of this chapter for personal injury or death which resulted  
9 from

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

14 (2) the commission or attempt on the part of one other than  
15 the applicant to commit any of the following offenses: mayhem; indecent  
16 act with children; kidnapping; murder; manslaughter; rape; assault with  
17 intent to kill, rob, rape, or poison; assault with intent to maim;  
18 assault with a dangerous weapon; threats to do bodily harm; or lewd,  
19 indecent, or obscene acts.

20 Sec. 44.58.100. NATURE OF THE COMPENSATION. The board may order  
21 the payment of compensation under this chapter for

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

24 (2) loss of earning power as a result of total or partial  
25 incapacity of the victim;

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

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

1           Sec. 44.58.105. EMERGENCY COMPENSATION. If it appears to the  
2 board that, prior to taking action on an application, the claim is one  
3 for which compensation is probable, and undue hardship will result  
4 to the applicant if immediate payment is not made, the board may make  
5 an emergency award of compensation to the applicant pending a final  
6 decision in the case. However

7                   (1) the amount of the emergency compensation shall not  
8 exceed \$500;

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

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

13           Sec. 44.58.110. LIMITATIONS ON AWARDING COMPENSATION. (a) No  
14 order for the payment of compensation may be made under sec. 80 of this  
15 chapter unless the application has been made within two years after the  
16 date of the personal injury or death, and the personal injury or death  
17 was the result of an incident or offense listed in sec. 90 of this  
18 chapter which had been reported to the police within five days of its  
19 occurrence or, if the incident or offense could not reasonably have  
20 been reported within that period, within five days of the time when a  
21 report could reasonably have been made.

22                   (b) No compensation may be awarded if the victim:

23                           (1) is a relative of the offender;

24                           (2) is at the time of the personal injury or death of the  
25 victim living with the offender as a member of his family or household,  
26 or maintaining a sexual relationship, whether illicit or not, with the  
27 person or with any member of his family;

28                           (3) violated a penal law of the state, which violation  
29 caused or contributed to his injuries or death; or

1 (4) is injured as a result of the operation of a motor  
2 vehicle, boat or airplane unless the vehicle was used as a weapon in a  
3 deliberate attempt to run the victim down.

4 (c) No compensation may be awarded under this chapter in an amount  
5 in excess of \$10,000 and all payments shall be made in a lump sum.

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

9 Sec. 44.58.120. RECOVERY FROM OFFENDER. When an order for the  
10 payment of compensation for personal injury or death is made under this  
11 chapter, the board, upon payment of the amount of the order, is subro-  
12 gated to the cause of action of the applicant against the person or  
13 persons responsible for the injury or death and is entitled to bring an  
14 action against the person or persons for the amount of the damages sus-  
15 tained by the applicant. If an amount greater than that paid under the  
16 order is recovered and collected in the action, the board shall pay the  
17 balance to the applicant.

18 Sec. 44.58.122. FALSE CLAIM. A person who knowingly makes a  
19 false claim under this chapter is guilty of a misdemeanor and upon  
20 conviction is punishable by a fine of not less than \$500, or by  
21 imprisonment for not more than one year, or by both, and shall forfeit  
22 any benefit received and shall repay the state for any payment of  
23 compensation made under this chapter.

24 Sec. 44.58.124. SURVIVAL AND ABATEMENT. The rights to compen-  
25 sation created under this chapter are personal and shall not survive  
26 the death of a victim or dependent entitled to them, except that if  
27 the death occurs after an application for compensation has been filed  
28 with the Violent Crimes Compensation Board, the proceeding shall not  
29 abate, but may be continued by the legal representative of the

1 decedent's estate.

2 Sec. 44.58.130. REPORTS. The board shall prepare and transmit to  
3 the governor and legislature annually a report of its activities under  
4 this chapter including the name of each applicant, a brief description  
5 of the facts in each case, and the amount of compensation awarded.

6 Sec. 44.58.140. DEFINITIONS. In this chapter

7 (1) "board" means the Violent Crimes Compensation Board;

8 (2) "dependent" means a relative of deceased victim, who was  
9 dependent upon the victim's income at the time of his death; children  
10 of a victim born after a victim's death are included;

11 (3) "personal injury" means actual bodily harm;

12 (4) "relative" means spouse, parent, grandparent, stepparent,  
13 natural born child, stepchild, adopted child, grandchild, brother,  
14 sister, half brother, half sister, or spouse's parents;

15 (5) "victim" means a person who is injured or killed by an  
16 incident specified in sec. 90 of this chapter.

17 \* Sec. 2. This Act takes effect on the day after its passage and approval  
18 or on the day it becomes law without approval.