

ACT 239

S.B. NO. 1309

A Bill for an Act Relating to Criminal Injuries Compensation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 351-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:
“‘Crime’ means those under section 351-32, and shall include an act of terrorism occurring outside the United States as defined in title 18 United States Code section 2331, against a resident of this State.”
2. By amending the definitions of “resident” and “victim” to read:
“‘Resident’ means [a person who maintains] every individual who:
 - (1) Intends to permanently reside in this State;
 - (2) Has a permanent abode in this State;
 - (3) Is a student at any institution of learning and claimed as a dependent of a Hawaii resident;
 - (4) Files a Hawaii income tax return; or
 - (5) Is registered to vote in this State.“Victim” means [a]:
 - (1) A person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State [or any];
 - (2) Any resident of the State who is injured or killed in another state by an act or omission of another person [in a state not having a crime victim compensation program eligible for federal funding under 42 United States Code §10601, et seq.], which act or omission is within the description of any of the crimes specified in section 351-32[.]; or
 - (3) A person who is a resident of this State who is injured or killed by an act of terrorism occurring outside the United States, as defined in title 18 United States Code section 2331.”

SECTION 2. Section 351-31, Hawaii Revised Statutes, is amended to read as follows:

“§351-31 Eligibility for compensation. (a) In the event any private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, or any state resident is injured or killed by any act or omission of any other person after July 1, 1989, in another state [not having a compensation program eligible for federal funding under 42 United States Code §10601, et seq., under which the state resident may receive compensation], which act or omission is within the description of the crimes enumerated in section 351-32, or any resident of this State who is injured or killed by an act of

terrorism occurring outside the United States, as defined in title 18 United States Code section 2331, the criminal injuries compensation commission in its discretion, upon an application, may order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the victim;
- (2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death;
- (3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; or
- (4) To any person who has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the deceased victim's injury and death.

(b) For the purposes of this chapter, a person shall be deemed to have intentionally committed an act or omission 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 commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused the victim's injury or death and the commission shall reduce the amount of compensation in proportion to the amount of responsibility for the crime which caused the victim's injury or death; provided that if [such] the proportion is greater than the responsibility of the person who committed the act or omission or, in the case of more than one person, the aggregate responsibility of such persons because of whom compensation is sought, the commission shall not award any compensation to [such] the victim.

(d) An order may be made under this section whether or not any person is prosecuted for or convicted of a crime arising out of an act or omission described in subsection (a)[; provided] if an arrest has been made or [such] the act or omission has been reported to the police without undue delay. No order may be made under this section unless the commission finds that:

- (1) The act or omission did occur; and
- (2) The injury or death of the victim resulted from the act or omission.

Upon application from either the prosecuting attorney or the chief of police of the appropriate county, the commission may suspend proceedings under this chapter for [such] a period as it deems desirable on the ground that a prosecution for a crime arising out of the act or omission has been commenced or is imminent, or that release of the investigation report would be detrimental to the public interest.

(e) If the commission finds that an applicant has made a false statement or representation of a material fact knowing it to be false, or has knowingly failed to disclose a material fact to obtain or increase any compensation under this chapter, and if the false statement or representation was discovered prior to the payment of compensation, the claim may be denied in its entirety[; provided that if]. If the claim has already been paid, the applicant [is responsible for reimbursement to] shall reimburse the commission.

(f) No compensation of any kind shall be awarded to a victim or intervenor who suffered injury or death while confined in any federal, state, or county jail, prison, or other correctional facility."

SECTION 3. Section 351-32, Hawaii Revised Statutes, is amended to read as follows:

“§351-32 **Violent crimes.** The crimes to which part III of this chapter applies are the following and no other:

- (1) Murder in the first degree (section 707-701);
- (2) Murder in the second degree (section 707-701.5);
- (3) Manslaughter (section 707-702);
- (4) Negligent homicide in the first degree (section 707-702.5);
- (5) Negligent homicide in the second degree (section 707-703);
- (6) Negligent injury in the first degree (section 707-705);
- (7) Negligent injury in the second degree (section 707-706);
- (8) Assault in the first degree (section 707-710);
- (9) Assault in the second degree (section 707-711);
- (10) Assault in the third degree (section 707-712);
- (11) Kidnapping (section 707-720);
- (12) Sexual assault in the first degree (section 707-730);
- (13) Sexual assault in the second degree (section 707-731);
- (14) Sexual assault in the third degree (section 707-732);
- (15) Sexual assault in the fourth degree (section 707-733); [and]
- (16) Abuse of family and household member (section 709-906)[.]; and
- (17) Terrorism, as defined in title 18 United States Code section 2331.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved July 20, 1998.)