

## No. 2002-85

## AN ACT

## SB 380

Amending the act of November 24, 1998 (P.L.882, No.111), entitled "An act providing for victims' rights; imposing penalties; establishing remedies; establishing the Office of Victim Advocate, the Bureau of Victims' Services, the Victims' Services Advisory Committee, the State Offender Supervision Fund and other funds; and making repeals," further providing for definitions, for rights of victims, for responsibilities of State and local law enforcement agencies and for powers and duties of bureau; amending provisions relating to compensation; and further providing for establishment of basic services for victims of crime.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 103, 201 and 212 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, amended October 30, 2000 (P.L.641, No.86), are amended to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adult." Any of the following:

(1) An individual charged with a crime who is 18 years of age or older.

(2) An individual who is subject to criminal court jurisdiction following the transfer of a case to criminal proceedings.

(3) An individual who is subject to criminal court jurisdiction after having been charged with a crime excluded from the definition of "delinquent act" pursuant to 42 Pa.C.S. § 6302 "delinquent act" (2)(i), (ii), (iii) or (v) (relating to definitions).

"Board." The Pennsylvania Board of Probation and Parole.

["Bureau." The Bureau of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.]

"Claimant." The person filing a claim under Chapter 7.

"Commission." The Pennsylvania Commission on Crime and Delinquency.

"Committee." The Victims' Services Advisory Committee established in section 321.

"Crime." An act[, including an act resulting in injury intentionally inflicted through the use of a motor vehicle,] which was committed:

(1) In this Commonwealth by a person, including a juvenile, without regard to legal exemption or defense which would constitute a crime under:

(i) the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) 18 Pa.C.S. (relating to crimes and offenses), 30 Pa.C.S. § 5502 (relating to operating watercraft under influence of alcohol or controlled substance) or 5502.1 (relating to homicide by watercraft while operating under influence) and 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance), 3732 (relating to homicide by vehicle), 3735 (relating to homicide by vehicle while driving under influence), 3735.1 (relating to aggravated assault by vehicle while driving under the influence) or 3742 (relating to accidents involving death or personal injury); or

(iii) the laws of the United States.

(2) Against a resident of this Commonwealth which would be a crime under paragraph (1) but for its occurrence in a [state] *location* other than this Commonwealth.

(3) Against a resident of this Commonwealth which is an act of international terrorism.

“Department.” The Department of Corrections of the Commonwealth.

“Direct victim.” An individual against whom a crime has been committed or attempted and who as a direct result of the criminal act or attempt suffers physical or mental injury, death or the loss of earnings under this act. The term shall not include the alleged offender. The term includes a resident of this Commonwealth against whom an act has been committed or attempted which otherwise would constitute a crime as defined in this act but for its occurrence in a [state] *location* other than this Commonwealth and for which the [person] *individual* would otherwise be compensated by the crime victim compensation program of the [state] *location* where the act occurred but for the ineligibility of such program under the provisions of the Victims of Crime Act of 1984 (Public Law 98-473, 42 U.S.C. § 10601 et seq.).

“Dispositional proceeding.” A proceeding which occurs in open common pleas court which potentially could dispose of the case. The term includes Accelerated Rehabilitative Disposition, pleas, trial and sentence.

“Diversionary program.” A program which is used to divert the defendant to an alternative form of disposition under the Pennsylvania Rules of Criminal Procedure or statutory authority. The term includes dispositions authorized by Rules 160, 176 and 314 of the Pennsylvania Rules of Criminal Procedure and sections 17 and 18 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

“Family.” When used in reference to an individual:

(1) anyone related to that individual within the third degree of consanguinity or affinity;

(2) anyone maintaining a common-law relationship with that individual; or

(3) anyone residing in the same household with that individual.

**“Injury.”** Includes physical or mental damages incurred as a direct result of the crime and aggravation of existing injuries if additional losses can be attributed to the direct result of the crime. **[Compensation for mental damages is limited to expenses incurred for psychological or psychiatric services which became necessary as a direct result of the crime.]**

**“International terrorism.”** Activities which meet all of the following:

(1) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state or that would be a criminal violation if committed within the jurisdiction of the United States or of any state.

(2) Appear to be intended:

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(3) Occur primarily outside of the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce or the locale in which their perpetrators operate or seek asylum.

**“Intervenor.”** An individual who goes to the aid of another and suffers physical or mental injury or death as a direct result of acting not recklessly to prevent the commission of a crime, to lawfully apprehend a person reasonably suspected of having committed such crime or to aid the victim of such crime.

**“Juvenile.”** An individual who is alleged or has been determined to be a “delinquent child” as defined in 42 Pa.C.S. § 6302 (relating to definitions).

**“Law enforcement agency.”** The Pennsylvania State Police and a local law enforcement agency.

**“Local correctional facility.”** A jail, prison or detention facility operated by a county or jointly by more than one county and used for the confinement of individuals for safe custody. The term does not include any facility used for the detention or confinement of juveniles.

**“Local law enforcement agency.”** A police department of a city, borough, incorporated town or township.

**“Loss of earnings.”** Includes the loss of the cash equivalent of one month’s worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran’s retirement, court-ordered child support or court-ordered spousal support **[payment if the payment is] payments if the payments are** the primary source of the victim’s income and the victim is deprived of [the] money as a direct result of a crime.

**“Office.”** The Office of Victim Advocate established in section 302.

**“Office of Victims’ Services.”** *The Office of Victims’ Services in the Pennsylvania Commission on Crime and Delinquency.*

**“Out-of-pocket loss.”** [The unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care and treatment rendered in accordance with a religious method of healing as approved by the board, or other services. The term includes psychological counseling, prosthetic devices, eyeglasses or other corrective lenses and dental devices reasonably necessary as a result of the injury upon which the claim is based and for which the claimant either has paid or is liable. The term includes expenses for physical examinations and materials used to obtain evidence. The term does not include property damage or pain and suffering.] *The term includes the following losses which shall be reimbursed at a rate set by the Office of Victims’ Services:*

(1) *expenses for unreimbursed and unreimbursable expenses or indebtedness incurred for medical care, nonmedical remedial care and treatment as approved by the Office of Victims’ Services or other services;*

(2) *expenses for counseling, prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses or dental devices reasonably necessary as a result of the crime upon which the claim is based and for which the claimant either has paid or is liable;*

(3) *expenses related to the reasonable and necessary costs of cleaning the crime scene of a private residence. “Cleaning” means to remove or attempt to remove stains or blood caused by the crime or other dirt or debris caused by the processing of the crime scene;*

(4) *expenses resulting from the temporary or permanent relocation of a direct victim and individuals residing in the household of the direct victim due to the incident forming the basis of the victim’s claim when there is an immediate need to protect the safety and health of the victim and individuals residing in the household, as verified by a medical provider, human services provider or law enforcement;*

(5) *expenses for physical examinations and materials used to obtain evidence; or*

(6) *other reasonable expenses which are deemed necessary as a direct result of the criminal incident.*

*Except as otherwise provided, the term does not include property damage or pain and suffering.*

**“Personal injury crime.”** An act, attempt or threat to commit an act which would constitute a misdemeanor or felony under the following:

18 Pa.C.S. Ch. 25 (relating to criminal homicide).

18 Pa.C.S. Ch. 27 (relating to assault).

18 Pa.C.S. Ch. 29 (relating to kidnapping).

18 Pa.C.S. Ch. 31 (relating to sexual offenses).

18 Pa.C.S. § 3301 (relating to arson and related offenses).

18 Pa.C.S. Ch. 37 (relating to robbery).

18 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness intimidation).

30 Pa.C.S. § 5502.1 (relating to homicide by watercraft while operating under influence).

75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) in cases involving bodily injury.

75 Pa.C.S. § 3732 (relating to homicide by vehicle).

75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).

75 Pa.C.S. § 3735.1 (relating to aggravated assault by vehicle while driving under the influence).

75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury).

The term includes violations of any protective order issued as a result of an act related to domestic violence.

“Preadjudication disposition.” Any of the following:

(1) Disposition of an adult without a trial. This paragraph includes accelerated rehabilitative disposition.

(2) Disposition of a juvenile prior to an adjudication of delinquency under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), including informal adjustment as set forth in 42 Pa.C.S. § 6323 (relating to informal adjustment), and consent decree as set forth in 42 Pa.C.S. § 6340 (relating to consent decree).

“Prosecutor’s office.” The Office of Attorney General or the office of a district attorney of a county.

“Victim.” The term means the following:

(1) A direct victim.

(2) A parent or legal guardian of a child who is a direct victim, except when the parent or legal guardian of the child is the alleged offender.

(3) A minor child who is a material witness to any of the following crimes and offenses under 18 Pa.C.S. (relating to crimes and offenses) committed or attempted against a member of the child’s family:

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 3121 (relating to rape).

(4) A family member of a homicide victim, including stepbrothers or stepsisters, stepchildren, stepparents or a fiancé, one of whom is to be identified to receive communication as provided for in this act, except where the family member is the alleged offender.

“Victim advocate.” The victim advocate in the Office of Victim Advocate within the Pennsylvania Board of Probation and Parole. Section 201. Rights.

Victims of crime have the following rights:

(1) To receive basic information concerning the services available for victims of crime.

(2) To be notified of certain significant actions and proceedings within the criminal and juvenile justice systems pertaining to their case. This paragraph includes all of the following:

(i) Access to information regarding whether the juvenile was detained or released following arrest and whether a petition alleging delinquency has been filed.

(ii) Immediate notification of a juvenile's preadjudication escape from a detention center or shelter facility and of the juvenile's subsequent apprehension.

(iii) Access to information regarding the grant or denial of bail to an adult.

(iv) Immediate notification of an adult offender's pretrial escape from a local correctional facility and of the offender's subsequent apprehension.

(3) To be accompanied at all criminal and all juvenile proceedings in accordance with 42 Pa.C.S. § 6336 (relating to conduct of hearings) by a family member, a victim advocate or other person providing assistance or support.

(4) In cases involving a personal injury crime or burglary, to submit prior comment to the prosecutor's office or juvenile probation office, as appropriate to the circumstances of the case, on the potential reduction or dropping of any charge or changing of a plea in a criminal or delinquency proceeding, or, diversion of any case, including an informal adjustment or consent decree.

(5) To have opportunity to offer prior comment on the sentencing of a defendant or the disposition of a delinquent child, to include the submission of a written and oral victim impact statement detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. The written statement shall be included in any predisposition or presentence report submitted to the court. Victim-impact statements shall be considered by a court when determining the disposition of a juvenile or sentence of an adult.

***(5.1) To have notice and to provide prior comment on a judicial recommendation that the defendant participate in a motivational boot camp pursuant to the act of December 19, 1990 (P.L.1391, No.215), known as the Motivational Boot Camp Act.***

[(5.1)] (5.2) Upon request of the victim of a personal injury crime, to have the opportunity to submit written comment or present oral testimony at a disposition review hearing, which comment or testimony shall be considered by the court when reviewing the disposition of the juvenile.

(6) To be restored, to the extent possible, to the precrime economic status through the provision of restitution, compensation and the

expeditious return of property which is seized as evidence in the case when in the judgment of the prosecutor the evidence is no longer needed for prosecution of the case.

(7) In personal injury crimes where the adult is sentenced to a State correctional facility, to be:

(i) given the opportunity to provide prior comment on and to receive State postsentencing release decisions, including work release, furlough, parole, pardon or community treatment center placement; **[and]**

(ii) provided immediate notice of an escape of the adult and of subsequent apprehension[.]; *and*

*(iii) given the opportunity to receive notice of and to provide prior comment on a recommendation sought by the Department of Corrections that the offender participate in a motivational boot camp pursuant to the Motivational Boot Camp Act.*

(8) In personal injury crimes where the adult is sentenced to a local correctional facility, to:

(i) receive notice of the date of the release of the adult, including work release, furlough, parole, *release from a boot camp* or community treatment center placement; and

(ii) be provided with immediate notice of an escape of the adult and of subsequent apprehension.

(8.1) If, upon the request of the victim of a personal injury crime committed by a juvenile, the juvenile is ordered to residential placement, a shelter facility or a detention center, to:

(i) Receive prior notice of the date of the release of the juvenile, including temporary leave or home pass.

(ii) Be provided with:

(A) immediate notice of an escape of the juvenile, including failure to return from temporary leave or home pass; and

(B) immediate notice of reapprehension of the juvenile.

(iii) Be provided with notice of transfer of a juvenile who has been adjudicated delinquent from a placement facility that is contrary to a previous court order or placement plan approved at a disposition review hearing and to have the opportunity to express a written objection prior to the release or transfer of the juvenile.

(9) If the adult is subject to an order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) and is committed to a local correctional facility for a violation of the order or for a personal injury crime against a victim protected by the order, to receive immediate notice of the release of the adult on bail.

(10) To receive notice if an adult is committed to a mental health facility from a State correctional institution and notice of the discharge, transfer or escape of the adult from the mental health facility.

(11) To have assistance in the preparation of, submission of and follow-up on financial assistance claims to the bureau.

(12) To be notified of the details of the final disposition of the case of a juvenile consistent with 42 Pa.C.S. § 6336(f) (relating to conduct of hearings).

(13) Upon the request of the victim of a personal injury crime, to be notified of the termination of the courts' jurisdiction.

**Section 212. Responsibilities of State and local law enforcement agencies.**

(a) **Training.**—A law enforcement agency shall insure that all of its officers and employees are familiar with crime victims' compensation as provided for in Chapter 7. Instruction concerning crime victims' compensation shall be made a part of the training curriculum for all trainee officers.

(b) **Notice.**—

(1) Law enforcement agencies shall within 48 hours of reporting give notice to the direct victim or, if appropriate, a member of the direct victim's family of the availability of crime victims' compensation. The notice required under this subsection shall be in writing **[and shall include the following paragraph:**

**If you have sustained injury as a direct result of a crime, including drunk driving, or are legally dependent for support upon a person who has sustained physical injury or death as a direct result of a crime or, in the event of a death caused by a crime, you have legally assumed or voluntarily paid the medical or burial expenses incurred as a direct result thereof or if you have sustained a loss of a primary source of income, you may qualify for indemnification by the Commonwealth of Pennsylvania for the out-of-pocket wages, other out-of-pocket losses and medical or burial expenses which you have incurred as a result of the crime. Claims must be filed with the Bureau of Victims' Services for the Commonwealth of Pennsylvania. For further information regarding this program, please contact:**

**(Name, business address and telephone number of the local law enforcement agency)**

**or**

**Bureau of Victims' Services  
(at the address of the bureau as published from time to time in the Pennsylvania Bulletin)  
Harrisburg, Pennsylvania**

**Important:** The statute provides that, absent certain extenuating circumstances, a claimant has one year from the date of the crime to file a claim with the Bureau of Victims' Services.] *and in a manner and form developed by the Office of Victims' Services.*



**(2) Law enforcement agencies shall provide basic information on the rights and services available for crime victims. The information shall be in writing and shall be provided to the victim within 24 hours of the law enforcement agency's first contact with the victim in a manner and form to be developed by the Office of Victims' Services.**

(c) Application.—The written notification provided for in subsection [(b)] (b)(1) shall be accompanied by one copy of the application form for crime victims' compensation. Application forms shall be supplied by the [bureau] *Office of Victims' Services* to law enforcement agencies. A record of the date of notification shall be maintained by the law enforcement agency. The [bureau] *Office of Victims' Services* shall maintain a mailing list of all local law enforcement agencies and provide law enforcement agencies with forms by which they can order additional claim forms. The [bureau] *Office of Victims' Services* shall also provide updates to law enforcement agencies on changes which affect their responsibilities under this act.

[(d) Information.—Law enforcement agencies are responsible for providing basic information on services available for crime victims. The information shall be in writing and shall be provided to the victim within 24 hours of the law enforcement agency's first contact with the victim in a form to be developed by the commission.]

(e) Forms.—The form developed by the [commission] *Office of Victims' Services* shall be attached to the police report and shall include a victim checkoff signifying that the information has been provided to the crime victim.

(f) Notice *in personal injury crimes*.—

(1) In personal injury crimes, the law enforcement agency shall make reasonable efforts to notify the victim of the arrest of the suspect and of the filing or forwarding of a complaint relating to the crime as soon as possible. Unless the victim cannot be located, notice of the arrest shall be provided not more than 24 hours after the preliminary arraignment. In cases alleging delinquency, notice of the filing or forwarding of a complaint shall be provided not more than 24 hours after the complaint has been filed or forwarded to the juvenile probation office or district attorney.

(2) In personal injury crimes, a law enforcement agency, sheriff, deputy sheriff or constable shall notify the victim of an inmate's escape from the custody of the law enforcement agency, sheriff, deputy sheriff or constable.

(g) Return of property.—The appropriate law enforcement agency shall return to the victim property seized as evidence if the prosecutor's office determines that the evidence is no longer needed for prosecution.

Section 2. Sections 311 and 312 of the act are amended to read:

Section 311. [Bureau] *Office of Victims' Services*.

(a) Establishment.—There is established within the commission the [Bureau] *Office of Victims' Services*. The [bureau] *Office of Victims' Services* shall be responsible for administering Chapter 7. The [bureau] *Office of Victims' Services* shall also be responsible for the disposition of all claims for [direct victim] compensation filed under Chapter 7.

(b) Director.—A director of the [bureau] *Office of Victims' Services* shall be appointed by the chairman of the commission. The director shall be paid compensation as the executive board may determine.

(c) Staff.—The director of the [bureau] *Office of Victims' Services* may employ personnel and contract for services as necessary and authorized to carry out the purposes of the [bureau] *Office of Victims' Services*.

Section 312. Powers and duties of [bureau] *Office of Victims' Services*.

The [bureau] *Office of Victims' Services*, subject to approval of the commission, has the following powers and duties:

(1) To establish and maintain a principal office in or near Harrisburg and such other offices within this Commonwealth as it may deem necessary.

(2) To appoint counsel, clerks, claims verifiers, hearing officers and other employees and agents as it may deem necessary, to fix their compensation within the limits provided by law and to prescribe their duties.

(3) To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Chapter 7. These regulations shall provide for the approval of attorney fees for representation before the [bureau] *Office of Victims' Services*, a hearing examiner or before the Commonwealth Court upon judicial review under section 705. Awards of the attorney fees shall be in addition to awards made to direct victims. Awards of attorney fees shall in no case exceed 15% of the award to the direct victim or victims. It shall be unlawful for an attorney to contract for or receive any sum larger than the amount allowed. Regulations under this paragraph shall include policies, procedures and standards of review regarding claims for compensation; approval or denial of claims, including contributory conduct by direct victims; verification of information and documents; prioritization of review; and all other matters related to the processing.

(4) To request and review from law enforcement agencies and from any other state or municipal department, agency or public authority assistance and data as will enable the [bureau] *Office of Victims' Services* to carry out its powers and duties.

(5) To determine all claims for awards filed with the [bureau] *Office of Victims' Services* under Chapter 7 and to reinvestigate or reopen cases as the [bureau] *Office of Victims' Services* deems necessary.

(6) To direct medical examinations of direct victims.

(7) To appoint hearing officers authorized to administer oaths or affirmations, to examine any person under oath or affirmation and to

issue subpoenas requiring attendance of witnesses, testimony of witnesses and production of evidence. Except where a claim is determined to be frivolous, **[the bureau shall reimburse]** claimants ***shall receive reimbursement at a rate to be determined by the Office of Victims' Services*** for attending hearings, regardless of the disposition of the claim[, **at the rate of 20¢ per mile and at the rate of \$20 for each day of hearing**].

(8) To take or cause to be taken affidavits or depositions in or outside of this Commonwealth.

(9) To render each year to the Governor and to the General Assembly a written report of its activities. **[In every third annual report, the bureau upon investigation and study shall include its findings and recommendations with respect to the limits on compensation whether or not an increase is being requested. The annual report shall include a summary of an audit by the Auditor General or an independent accounting firm of a statistically valid sample of the amounts paid to direct victims so as to avoid duplications, other possible errors or fraud. The bureau shall formalize agreements with the Auditor General for the provision of the annual audit.]**

(10) To arrange with the heads of other Commonwealth agencies for the performance of any of its functions under this act with or without reimbursement and with the approval of the Governor to delegate and authorize the redelegation of any of its powers under this act.

(11) To establish a program to assure extensive and continuing publicity of information regarding the compensation provisions under Chapter 7. This information shall include the right to file a claim, the scope of coverage and procedures to be utilized incident thereto.

(12) To administer the funds under section 1101(b) for the payment of claims filed under Chapter 7 and for all reasonable and necessary administrative expenses.

***(13) To establish compensation limits and reimbursement rates for the purpose of carrying out the provisions of Chapter 7. The Office of Victims' Services shall publish a schedule of these compensation limits and reimbursement rates in the Pennsylvania Bulletin provided that the Office of Victims' Services shall, within two years of such publication, promulgate a regulation setting forth the schedule of compensation limits and reimbursement.***

Section 3. Section 322(1) and (7) of the act, amended October 30, 2000 (P.L.641, No.86), are amended to read:

Section 322. Powers and duties of committee.

The committee has the following powers and duties:

(1) To serve in an advisory capacity to the commission, including the **[bureau] Office of Victims' Services**, through the committee's participation in the development of that part of the commission's plan relating to direct victims' services and compensation.

\* \* \*

(7) To receive staff support from the commission and the [bureau] *Office of Victims' Services* in order to adequately perform the duties provided for in this section.

Section 4. Sections 701, 702, 703, 704, 705, 706, 707, 708, 709, 710 and 902 of the act are amended to read:

Section 701. Persons eligible for compensation.

(a) General rule.—Except as *otherwise* provided in [subsection (b)] *this act*, the following persons shall be eligible for compensation:

- (1) A direct victim.
- (2) An intervenor.
- (3) A surviving spouse, parent or child of a deceased direct victim or intervenor.
- (4) Any other individual dependent for principal support upon a deceased direct victim or intervenor.

[(5) Any individual related to the direct victim who assumes the obligation or who pays the funeral or burial expense incurred as a direct result of the crime or, if no relative assumes the obligation, the person who makes the payment.]

(6) *Any person who assumes the obligation or who pays for the crime scene cleanup, funeral or burial expenses incurred as a direct result of the crime.*

(b) Exception.—A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person shall not be eligible to receive compensation with respect to the claim. A member of the family of the individual who committed the crime shall not be eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

[(c) Family.—If a crime results in death, the spouse, children, parents or siblings of the direct victim who resided within the same household as the direct victim shall be eligible for compensation for the cost of psychological counseling and other reasonable out-of-pocket losses which are deemed necessary as a direct result of the criminal incident.]

Section 702. Filing of claims for compensation.

(a) General rule.—[A] *Except as otherwise provided in this act*, a claim for compensation may be filed by an individual eligible for compensation as provided in section 701[.] *or as follows*:

(1) If the individual is a minor, the claim may be filed by a parent or guardian. *If the parent or guardian of a minor who is eligible for compensation is unavailable or fails to assume financial responsibility for the minor's care, a person who assumes financial responsibility for services eligible for compensation and who is not a provider of services*

*or an insurance company may file a claim on behalf of the minor and may receive compensation for eligible services provided to the minor.*

(2) If the individual is mentally incompetent, the claim may be filed by a guardian or legal representative. *If the guardian or legal representative of a mentally incompetent individual who is eligible for compensation is unavailable or fails to assume financial responsibility for the individual's care, a person who assumes financial responsibility for services eligible for compensation and who is not a provider of services or an insurance company may file a claim on behalf of the individual and may receive compensation for eligible services provided to the individual.*

(b) Time.—

(1) Except as set forth in paragraph (2), a claim must be filed not later than [one year] *two years* after the occurrence of the crime upon which the claim is based or not later than [one year] *two years* after the death of the direct victim or intervenor *as a result of the crime or the discovery and identification of the body of a murder victim.*

(2) [Extensions] *Exceptions* shall be as follows:

(i) For good cause, the bureau may extend the time for filing for a period of not more than two years after the occurrence.]

(ii) If a direct victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the direct victim's parent or a person responsible for the direct victim's welfare, an individual residing in the same home as the direct victim or a paramour of the direct victim's parent, [the bureau may, for good cause, extend the time for filing for a period of not more than five years after the occurrence.] *all of the following shall apply:*

(A) *The limitation period under this subsection is tolled until the direct victim reaches 21 years of age.*

(B) *The limitation period shall run until the later of:*

(I) *the end of the limitation period for the offense as set forth in 42 Pa.C.S. Ch. 55 Subch. C (relating to criminal proceedings); or*

(II) *the end of the limitation period under paragraph (1).*

(ii.1) *If a direct victim is under 18 years of age at the time of the occurrence of the crime and the direct victim is seeking reimbursement for counseling services only, all of the following shall apply:*

(A) *The limitation period under this subsection is tolled until the direct victim reaches 21 years of age.*

(B) *The limitation period shall run until the later of:*

(I) *the end of the limitation period for the offense as set forth in 42 Pa.C.S. Ch. 55 Subch. C; or*

(II) *the end of the limitation period under paragraph (1).*

**[(iii)] (b.1) Returned claims.**—If a claim has been filed but subsequently returned to the claimant for correction or for additional verification or information, the date the claim was first received by the bureau shall be the permanent filing date for purposes of **[this subsection] subsection (b)**. The correction or additional verification or information must be filed within **[six months of the date of return] a period of time established by the Office of Victims' Services**.

**(c) Manner.**—Claims must be filed **[in the office of] with the bureau [or by mail] in person, by mail or by any electronic means authorized by the Office of Victims' Services**.

**[(d) Notice.**—Upon filing of a claim, the bureau shall promptly notify the district attorney of the county where the crime is alleged to have occurred. If, within ten days after notification, the district attorney advises the bureau that a criminal prosecution is pending upon the same alleged crime and requests that action by the bureau be deferred, the bureau shall defer all proceedings under this chapter until a trial verdict has been rendered and shall so notify the district attorney and claimant. When a trial verdict has been rendered, the district attorney shall promptly notify the bureau. Nothing in this section shall limit the authority of the bureau to grant emergency awards under section 706.]

Section 703. Minimum allowable claim.

**(a) General rule.**—Except as set forth in subsection (b), no award shall be made on a claim unless the claimant has incurred **[a minimum out-of-pocket loss of \$100 or has lost at least two continuous weeks' earnings or support] an aggregate minimum out-of-pocket loss, loss of earnings or loss of support of \$100**.

**(b) Exception.**—Subsection (a) shall not apply if the direct victim was 60 years of age or older at the time the crime occurred.

Section 704. Determination of claims.

**(a) Processing.**—The **[bureau] Office of Victims' Services** shall establish functional procedures for the intake, verification and processing of claims.

**(b) Review.**—

**(1) The [bureau] Office of Victims' Services** shall review the claim and all supporting documents and investigate the validity of the claim. The investigation shall include an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based. The **[bureau] Office of Victims' Services** may not request or review counseling notes of mental health service providers. The **[bureau] Office of Victims' Services** shall request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime.

(2) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended, prosecuted or adjudicated for the crime in question.

(c) Determination.—The [bureau] *Office of Victims' Services* shall determine whether to grant an award, increase or decrease an award or deny the claim based on the supporting documents, the report of the investigation and staff recommendations. If the [bureau] *Office of Victims' Services* is unable to determine if a claim is justified based upon the supporting documents, it may direct a hearing before a hearing examiner designated by the commission. At the hearing, any relevant evidence not legally privileged shall be admissible.

(d) Notice.—The [bureau] *Office of Victims' Services* shall promptly notify the claimant [and the State Treasurer] of [the] *its* final decision [of the bureau].

(e) Records.—The [bureau] *Office of Victims' Services* shall maintain complete records and histories on all claims filed, supplemental awards paid to claimants, claims status and third-party entitlements and recoveries.

Section 705. Judicial review.

Within 30 days after receipt of a copy of the report containing a final decision of the [bureau] *Office of Victims' Services*, the claimant [or the Attorney General] may appeal the final decision of the [bureau] *Office of Victims' Services* in the manner provided for appeals from administrative agencies as provided in 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 706. Emergency awards.

(a) Authorization.—Notwithstanding the provisions of sections 704 and 707, if it appears to the [bureau] *Office of Victims' Services* that the claim is one with respect to which an award probably will be made and that undue hardship will result to the claimant if immediate payment is not made, the [bureau] *Office of Victims' Services* may make an emergency award to the claimant pending a final decision in the case. The following shall apply:

(1) The total amount of the emergency award shall not exceed [\$1,000 per claim] *\$1,500 per claim or at a rate set by the Office of Victims' Services.*

(2) The amount of the emergency award shall be deducted from any final award made to the claimant.

(3) The excess of the amount of the emergency award over the amount of the final award or the full amount of the emergency award if no final award is made shall be repaid by the claimant to the [bureau] *Office of Victims' Services.*

(b) Reconsideration.—The [bureau] *Office of Victims' Services* may reconsider an emergency award at any time prior to the final decision in the case and increase previous orders for emergency compensation up to the overall limit of [\$1,000 per claim] *\$1,500 per claim or at a rate set by the Office of Victims' Services.*

(c) **Compilation.**—The [bureau] *Office of Victims' Services* shall compute the total number and amount of emergency awards given in each fiscal year for inclusion in the annual report.

**Section 707. Awards.**

(a) **Requirements.**—No award shall be made unless it is determined by a preponderance of the evidence that:

- (1) A crime was committed.
- (2) The person injured or killed was a direct victim or intervenor.
- (3) The crime was promptly reported to the proper authorities. In no case may an award be made if the record shows that the report was made more than 72 hours after the occurrence of the crime unless:

*(i) the victim is under 18 years of age at the time of the occurrence of the crime and the alleged offender is the victim's parent or a person responsible for the victim's welfare, an individual residing in the same home as the victim or a paramour of the victim's parent; or*

*(ii) the [bureau] Office of Victims' Services finds the delay to have been justified, consistent with bureau regulations. [The bureau, upon finding that any claimant, direct victim or intervenor has not fully cooperated with all law enforcement agencies, may deny or withdraw any award, as the case may be.]*

*(4) The direct victim, intervenor or claimant has fully cooperated with all law enforcement agencies and the Office of Victims' Services unless the Office of Victims' Services finds the noncompliance to have been justified consistent with Office of Victims' Services regulations.*

(b) **Amount.**—

(1) Any award made under this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from such injury. In no case shall the total amount of an award exceed \$35,000[.] *except for payment of the following:*

*(i) counseling, the maximum amount of which shall be in accordance with paragraph (4.1);*

*(ii) forensic rape examination and medications directly related to the sexual assault or rape, the amount of which shall not exceed \$1,000; or*

*(iii) reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which shall not exceed \$500.*

(2) An award made for loss of earnings or support shall, unless reduced pursuant to other provisions of this chapter, be in an amount equal to the actual loss sustained. The following shall apply:

*(i) No such award shall exceed the average weekly wage for all persons covered by the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, in*



this Commonwealth as determined annually by the Department of Labor and Industry for each week of lost earnings or support.

(ii) Except as set forth in subparagraph (iii), the aggregate award for the loss shall not exceed \$15,000.

(iii) In the case of death of a direct victim or intervenor, the aggregate award shall not exceed \$20,000.

(3) If an order of restitution has been entered on behalf of the direct victim, those amounts actually collected shall be applied first to property losses incident to the crime and secondly to personal injury losses as set forth in subsection (f).

***(4) An award for counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker and subject to the provisions of paragraph (4.1) may be made to:***

***(i) a direct victim;***

***(ii) an individual responsible for the direct victim's welfare;***

***(iii) an individual who is physically present at the crime scene and witnesses a violent crime;***

***(iv) in the case of a homicide, an individual who discovers the body;***

***(v) anyone related to the direct victim within the second degree of consanguinity or affinity;***

***(vi) anyone maintaining a common-law relationship with the direct victim;***

***(vii) anyone residing in the same household with the direct victim; or***

***(viii) anyone engaged to be married to the direct victim.***

***(4.1) In the case of an award made pursuant to paragraph (4), the following shall apply:***

***(i) The amount of an award under paragraph (4)(i) shall not exceed \$5,000 where the direct victim is an adult and shall not exceed \$10,000 where the direct victim is a minor.***

***(ii) The amount of an award under paragraph (4)(ii), (v), (vi), (vii) or (viii) shall not exceed \$2,500 except in the case of a homicide whereby the amount of this award shall not exceed \$5,000.***

***(iii) The amount of an award under paragraph (4)(iii) or (iv) shall not exceed \$1,500.***

***(5) An award for the reasonable and necessary costs for the replacement of prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses, dental devices or prescription medications damaged or stolen as a result of the crime shall be at a rate set by the Office of Victims' Services. Expenses for prosthetic devices, wheelchairs, canes, walkers, hearing aids, eyeglasses or other corrective lenses, dental devices or prescription***

***medications needed as a result of the crime shall be counted against the \$35,000 award limitation.***

(c) Public assistance.—Provisions of awards made pursuant to a statute compensating or benefiting a direct victim or claimant shall in no way affect the claimant's or direct victim's eligibility under public assistance or any other Federal or Commonwealth social benefit or assistance program.

(d) Apportionment.—If there are two or more **[persons] *individuals*** entitled to an award as a result of the death of a direct victim or intervenor, the award shall be apportioned among the claimants.

(e) Reduction.—Except **[for payments or proceeds that are specifically denominated as compensation for dismemberment or loss of an eye] *as otherwise provided in this act***, an award made under this chapter shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury:

(1) from or on behalf of the **[person] *individual*** who committed the crime;

(2) under any insurance or health and welfare programs, including those mandated by law;

(3) under any contract of insurance wherein the claimant is the beneficiary;

(4) from public funds;

(5) as an emergency award under section 706; **[or]**

(6) under any pension program, including those providing for disability or survivor's benefits[.]; **or**

**(7) *under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.***

(f) Direct victim responsibility.—

(1) Except as set forth in **[paragraph (2)] *paragraphs (2) and (3)***, in determining the amount of an award, the **[bureau] *Office of Victims' Services*** shall determine whether the direct victim or intervenor, because of conduct, contributed to the infliction of the injury. The **[bureau] *Office of Victims' Services*** shall reduce the amount or deny the claim altogether in accordance with the determination.

(2) If the crime involved is rape or sexual assault, the conduct of the direct victim shall not be considered. If the crime involved is related to domestic violence, the conduct of the direct victim shall not be considered unless the direct victim was the primary aggressor.

**(3) *If the crime involved is a homicide, the conduct of the direct victim shall not be considered for claims by eligible claimants for counseling.***

(g) Intervenor responsibility.—In determining the amount of an award to an intervenor, the **[bureau] *Office of Victims' Services*** may consider whether the intervenor, because of conduct, contributed to the infliction of

the injury. The [bureau] *Office of Victims' Services* shall reduce the amount or deny the claim altogether in accordance with the determination.

(h) Forensic rape investigation.—

(1) A hospital or other licensed health care provider may submit a claim for reimbursement for the cost of a forensic rape examination if the cost is not covered by insurance[, upon approval by the district attorney with jurisdiction of the rape or sexual assault investigation and prosecution. In no event shall the bureau pay an amount to exceed \$500 for a forensic rape examination nor \$100 for medications directly related to the sexual assault or rape.] *or if the victim requests that the insurance carrier not be billed. Upon filing of a claim, the Office of Victims' Services shall promptly notify the prosecutor of the county where the crime is alleged to have occurred. The reimbursement, where applicable, shall be at a rate set by the Office of Victims' Services.*

(2) *The cost of a forensic rape examination and the cost of medications prescribed to the direct victim shall not be charged to the victim.*

(3) A sexual assault or rape victim need not be an applicant for any other compensation under this chapter.

Section 708. Manner of payment.

(a) *Lump sum.*—The award shall be paid in a lump sum, except that, in the case of death or protracted disability, the award may provide for periodic payments. No award made under this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. All awards shall be paid by *or under the authority of* the State Treasurer. An award shall not be considered as compensation taxable as income under Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. The [bureau] *Office of Victims' Services* shall reconsider at least annually every award being paid in installments. The [bureau] *Office of Victims' Services* may reconsider a claim at any time and modify or rescind previous orders for compensation based upon a change in financial circumstances of a direct victim or one or more surviving dependents.

(b) *Medical expenses.*—*Medical expenses, except as otherwise provided, shall be paid to a hospital or other licensed health care provider on behalf of the victim at a rate set by the Office of Victims' Services. If the Office of Victims' Services accepts a claim, the hospital or other licensed health care provider shall accept such payment as payment in full and may not attempt to collect from the victim any amount exceeding the amount of reimbursement made by the Office of Victims' Services.*

Section 709. Confidentiality of records.

[The record of a proceeding before the bureau or a hearing examiner shall be a public record; however, a record or report obtained by the bureau or a hearing examiner, the confidentiality of which is protected

by any other law or regulation, shall remain confidential subject to that law or regulation.]

(a) *General rule.*—All reports, records or other information obtained or produced by the bureau during the processing or investigation of a claim shall be confidential and privileged, shall not be subject to subpoena or discovery, shall be used for no purpose other than the processing of a claim and, except as otherwise provided by law or as provided in this section, shall not be introduced into evidence in any judicial or administrative proceeding.

(b) *Disclosure restricted.*—Except as otherwise provided by law, no person who has had access to a report, record or any other information under this subsection shall disclose the content of such a report, record or other information or testify in a judicial or administrative proceeding without the written consent of the direct victim or intervenor or, if the direct victim or intervenor is deceased, the claimant.

(c) *Construction.*—This section shall not be construed to preclude or limit introduction of the contents of a report, record or other information in an appeal hearing before the Office of Victims' Services or in an investigation, prosecution or judicial proceeding enforcing section 1303 or in communicating with the prosecutor's office regarding restitution.

Section 710. Responsibilities of employers, service providers and insurance companies.

(a) *Response.*—[Providers] *Employers, insurance companies or providers* of services to direct victims, *intervenors or claimants*, including, *but not limited to*, doctors, hospitals[,] and counselors [and insurance companies providing or liable for reimbursement to direct victims or any other claimants], shall respond in writing to the [bureau's] *Office of Victims' Services'* request for confirmation or other information under this chapter within 30 days of receipt of the [bureau's] *Office of Victims' Services'* request.

(b) *Penalty.*—Any [provider of services or insurance company] *person* who fails to respond [within 30 days of receipt of the request] *to a request under subsection (a)* shall be subject to a [civil] penalty of not more than \$50 per day, up to and including the date of compliance.

(c) *Enforcement.*—The office of the district attorney of the county in which the crime occurred and the [Attorney General] *Office of Victims' Services* shall be charged with enforcement of this section *and the collection of penalties, which may be given to local victim service agencies or used for the enforcement and collection of penalties under this section.*

Section 902. Establishment of basic services for victims of crime.

The commission shall provide technical assistance to and make grants to district attorneys [and], other criminal justice agencies *or victim service agencies* which provide crime victims with the following services:

- (1) Notification services, including all of the following:

- (i) Information concerning financial assistance and other social services available as a result of being a victim of crime.
  - (ii) Notification that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the victim an unnecessary trip to court.
  - (iii) Notification of the final disposition of the case.
- (2) Protection services, including all of the following:
- (i) Protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.
  - (ii) A secure waiting area during court proceedings which does not require them to be in close proximity to defendants and families and friends of defendants.
- (3) Procedures for the expedited return by law enforcement officials of personal property of victims which is held for prosecutorial purposes.
- (4) Services related to the rights of victims under Chapter 2.
- (5) Other services as defined by the commission.

Section 5. Section 1101(a), (b) and (d) of the act, amended October 30, 2000 (P.L.641, No.86), are amended to read:

Section 1101. Costs.

(a) Imposition.—

(1) A person who pleads guilty or nolo contendere or who is convicted of a crime shall, in addition to costs imposed under 42 Pa.C.S. § 3571(c) (relating to Commonwealth portion of fines, etc.), pay costs of at least [~~\$40~~] **\$60** and may be sentenced to pay additional costs in an amount up to the statutory maximum monetary penalty for the offense committed.

(2) A person placed in a diversionary program shall pay costs of at least [~~\$40~~] **\$60** in addition to costs imposed pursuant to 42 Pa.C.S. § 3571(c).

(3) A juvenile shall pay costs of at least [~~\$15~~] **\$25** if any of the following apply to the case:

- (i) There is a consent decree.
- (ii) There is an adjudication of delinquency.

(b) Disposition.—

(1) There is established a special nonlapsing fund, known as the Crime Victim's Compensation Fund. This fund shall be used by the [~~bureau~~] ***Office of Victims' Services*** for payment to [~~direct victims~~] ***claimants*** and technical assistance. [~~Fifteen~~] ***Thirty-five*** dollars of the costs imposed under subsection (a)(1) and (2) plus 30% of the costs imposed under subsection (a)(1) which exceed [~~\$40~~] **\$60** shall be paid into this fund. All costs imposed under subsection (a)(3) shall be paid into this fund.

(2) There is established a special nonlapsing fund, known as the Victim Witness Services Fund. This fund shall be used by the commission for victim-witness services and technical assistance in

nonvictim compensation-related areas in accordance with this section. Twenty-five dollars of the costs imposed under subsection (a)(1) and (2) plus 70% of the costs imposed under subsection (a)(1) and (2) which exceed ~~[\$40]~~ \$60 shall be paid into this fund.

\* \* \*

(d) Mandamus.—The district attorney, the ~~[bureau]~~ *Office of Victims' Services*, the commission or any ~~[direct]~~ victim shall have standing to seek a mandamus order requiring the county to collect the costs imposed by this section.

\* \* \*

Section 6. Sections 1301(b) and 1302 of the act are amended to read:  
Section 1301. Subrogation.

\* \* \*

(b) Excess.—If an amount greater than that paid under Chapter 7 is recovered and collected in such an action, the Commonwealth shall pay the balance to the claimant. The Attorney General shall enforce any subrogation. A claimant who fails to notify the ~~[bureau]~~ *Office of Victims' Services* of the receipt of funds from any other claim or award arising out of the crime shall forfeit and pay to the Commonwealth an amount equal to all awards paid by the bureau to the claimant or on the claimant's behalf.

Section 1302. Restitution.

To the extent that restitution is ordered either prior to or subsequent to the making of an award by the ~~[bureau]~~ *Office of Victims' Services*, the restitution shall be paid to the Commonwealth to the extent of the award by the ~~[bureau]~~ *Office of Victims' Services*.

Section 7. This act shall take effect in 60 days.

APPROVED—The 28th day of June, A.D. 2002.

MARK S. SCHWEIKER