



VIRGINIA VICTIMS FUND

Helping Innocent Victims of Crime

OFFICIALLY CRIMINAL INJURIES COMPENSATION FUND

POLICIES

of

THE VIRGINIA VICTIMS FUND

(officially Criminal Injuries Compensation Fund)

Post Office Box 26927

Richmond, VA 23261

(800) 552-4007

a division of

THE VIRGINIA WORKERS' COMPENSATION COMMISSION

333 East Franklin Street

Richmond, VA 23219

(877) 664-2566



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INTRODUCTION

On July 1, 1977, the Virginia Compensating Victims of Crime Act was enacted to compensate victims who suffer injuries as a result of a crime (§ 19.2-368.1 *et seq.*, Code of Virginia) (hereafter “the Act”). Benefits are limited to a total of \$35,000 and are payable for medical expenses, wage loss, moving expenses, crime scene clean-up, counseling costs, and other expenses incurred by or on behalf of a victim. In homicide cases, funeral or burial expenses are payable up to \$10,000, eligible relatives may receive survivors’ counseling, and dependent survivors may receive compensation for loss of support from the victim.

This program is administered by the Virginia Workers' Compensation Commission through the Criminal Injuries Compensation Fund (*hereafter, Virginia Victims Fund*). It is funded through fines levied against individuals convicted of felonies and misdemeanors in the Courts of the Commonwealth [*See § 19.2-368.18 (B) of the Act*] and through federal grants under the Victims of Crime Act (VOCA). [*See Victims of Crime Act of 1984, Pub. L. No. 104-235, codified at 42 U.S.C. §§ 10601-10605, 18 U.S.C. § 3771.*]

As of July 2008, the Fund also administers the Sexual Assault Forensic Exam (SAFE) Payment Program for the Commonwealth. Funds are transferred from the Supreme Court for this purpose and the policies governing SAFE payments are approved by the Commission per §19.2-368.3(1)(i) of the Code in a separate manual. § 19.2-368.3 (1)(i)

/As of July 2018, the Fund was mandated to collect and disburse unclaimed restitution pursuant to § 19.2-368.3 (9) of the Code of Virginia. Policies and procedures for the receipt, collection, and disbursement of unclaimed restitution to victims of crime is held in a separate manual. § 19.2-368.3 (9)(10)

The Virginia Victims Fund issues this Policies and Procedures manual under the authority, direction, and guidance of the Workers' Compensation Commission. **§19.2-368.3** When administering the Fund and making claims determinations, this policy manual, the SAFE payment policy manual, the Unclaimed Restitution policy manual, the Act, and the grant rules of the Victims' of Crime Act [**Victims of Crime Act of 1984, Pub. L. No. 104-235, codified at 42 U.S.C. §§ 10601-10605, 18 U.S.C. § 3771**], must all be considered.

DEFINITIONS

As used throughout these guidelines, the following words and phrases shall have the following meanings:

“Act” shall mean the Compensating Victims of Crime Act, codified at § 19.2-368.1 *et seq.*, Code of Virginia;

“CA” shall refer to local Commonwealth’s Attorneys;

“Commission” shall mean the Virginia Workers’ Compensation Commission;

“DCJS” shall mean Department of Criminal Justice Services;

“Director” shall mean the Director of the Fund;

“Explanation of Benefits” shall mean the document that lists benefits paid and/or denied for claims submitted to the insurance carrier (*commonly referred to as “EOBs”*);

“Full Commission” refers to the three legislatively appointed Commissioners of the Commission;

“Fund” or **“VVF”** shall mean the Virginia Victims Fund (*officially the Criminal Injuries Compensation Fund*);

“Itemized Billing Statement” shall mean the type of bill that shows the individual charges for all procedures performed and services rendered to the patient;

“Medical Record” shall mean the written notes and reports concerning patients’ diagnoses, symptoms, course of treatment, and prognoses;

“Notice of Filing” shall mean a notification to medical and mental health providers notifying them that a claim has been filed and that collection action may not be taken against the victim/claimant until a claim decision has been made;

“VDEM” shall mean the Virginia Department of Emergency Management;

“VOCA” shall mean the Federal Victims of Crime Act;

“VWAP” or **“VW”** shall mean Victim/Witness Assistance Program or Victim/Witness;

“WebFile” shall mean the Fund’s online claim submission and management system that is available to victim advocates and medical providers.

CONTACTS AND INFORMATION

(A) THE VIRGINIA VICTIMS FUND

Claim forms and additional information may be obtained by calling or writing:

- (1) Telephone
(800) 552-4007 (toll-free)
(804) 823-6905 (fax)
- (2) Mailing Address
Virginia Victims Fund
Post Office Box 26927
Richmond, VA 23261
- (3) Website and E-mail
<http://www.virginiavictimsfund.org>
info@virginiavictimsfund.org
- (4) Fund Leadership
Shannon Dion, Director

(B) THE VIRGINIA WORKERS' COMPENSATION COMMISSION

The Workers' Compensation Commission oversees the Virginia Victims Fund and handles appeal requests. The Commission may be contacted as follows:

- (1) Telephone and Fax
(877) 664-2566 (toll-free)
(804) 367-6124 (fax)
- (2) Mailing Address
Virginia Workers' Compensation Commission
333 East Franklin Street
Richmond, VA 23219
- (3) Commission Leadership
R. Ferrell Newman, Commissioner
Wesley G. Marshall, Commissioner
Robert A. Rapaport, Commissioner
Evelyn McGill, Executive Director
Jason Quattropiani, Clerk

(C) VICTIM/WITNESS ASSISTANCE PROGRAMS

Almost all cities and counties in the Commonwealth are served by Victim/Witness Assistance Programs. These programs generally assist victims of crimes occurring within their service areas.

Victim/Witness programs are established and operated by local governments, and they are usually associated with either the local Commonwealth's Attorney's office or the local police department or sheriff's office. The primary functions of VWAP are to explain the criminal justice process to victims and witnesses of crime, to help victims and /witnesses understand their rights, and to assist victims and witnesses with matters concerning the arrest, trial, and incarceration of criminals.

Victim/Witness programs and law-enforcement officers are required by law to inform victims of financial assistance that may be available to them as victims of crime, including information about their possible right to file a claim for compensation from the Virginia Victims Fund. § 19.2-11.01(A)(2)(a) Victim/Witness professionals often assist victims with filing and perfecting their VVF claims, and they usually have VVF claim forms on hand.

In localities without a VW program, or in areas in which the VW program does not work with criminal injuries claims, claimants can often contact the local Commonwealth's Attorney or law-enforcement agency for information and claim forms for the Fund. For help locating or contacting the VWAP in any locality in Virginia, please call the Fund at (800) 552-4007 or the Victim Witness Assistance Network at (855) 4-HELP-VA. DCJS maintains a directory of VW programs and other groups that assist victims. Please visit their website at www.dcjs.virginia.gov.

Please note that because the Victim/Witness Assistance Programs are not part of the Fund or the Commission, delivering documents to a VW program is not the same as delivering them to the Fund. Victim/Witness programs can assist people with their claims with the Fund. When documents are needed to support a claim or when a claimant needs information about his claim, the Fund should be contacted directly, as indicated above. Victim/Witness programs cannot guarantee eligibility or payment of expenses. These claim and expense eligibility decisions cannot be made until completed claims are received and investigated by the Fund.

WHO MAY RECEIVE BENEFITS

(A) ELIGIBLE PERSONS

(1) Crime Victims

- (a) Any person who suffers personal physical injury or death as a direct result of a crime. §§ 19.2-368.2 and 19.2-368.4(A)(1)

A crime is defined as:

... an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or § 18.2-266 or from a felony violation of §46.2-894.
§ 19.2-368.2

- (b) Any person who suffers personal emotional injury as a direct result of a violent felony offense as defined in subsection C of §17.1-805, or stalking as defined in §18.2-60.3, or robbery or abduction, attempted robbery or abduction. §19.2-368.2
- (c) Any victim as described in subsection D of § 19.2-327.18, Chapter 19.4 of Title 19.2 of the Code of Virginia.

(2) “Good Samaritans”

Any person (*except a law-enforcement officer engaged in the performance of his duties*) who suffers personal physical injury or death as a direct result of attempting to prevent a crime from occurring in his presence or trying to apprehend a person who (a) had committed a crime in his presence, or (b) had, in fact, committed a felony. §§ 19.2-368.2 and 19.2-368.4(A)(3)

(3) Specific Relatives of Deceased Victims

A surviving spouse, parent, grandparent, sibling, or child, including posthumous children, of a victim of a crime who died as a direct result of such crime.
§ 19.2-368.4(A)(2)

“The term ‘child’ shall include a stepchild, a legally adopted child, a posthumous child, and an acknowledged illegitimate child, but shall not include a married child; and the term ‘parent’ shall include stepparents and parents by adoption.”
§ 65.2-515

(4) Relatives of Deceased “Good Samaritans”

A surviving spouse, parent, grandparent, sibling or child, including posthumous children, of any person who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or who had, in fact, committed a felony. § 19.2-368.4(A)(4)

“The term ‘child’ shall include a stepchild, a legally adopted child, a posthumous child, and an acknowledged illegitimate child, but shall not include a married child; and the term ‘parent’ shall include stepparents and parents by adoption.” § 65.2-515

(5) Legal Dependents

Any other person legally dependent for his principal support upon a victim of crime who dies as a result of such crime or who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony. § 19.2-368.4(A)(5)

“The term ‘child’ shall include a stepchild, a legally adopted child, a posthumous child, and an acknowledged illegitimate child, but shall not include a married child; and the term ‘parent’ shall include stepparents and parents by adoption.” § 65.2-515

(6) Individual taking responsibility for Funeral Expenses

Any person who pays expenses directly related to funeral or burial is eligible for reimbursement. §19.2-368.11:1 (E)

(B) INELIGIBLE PERSONS

(1) Law Enforcement Personnel

Law-enforcement officers engaged in performance of their duties are not eligible for awards from the Fund. § 19.2-368.4(A)(3) Officers who are injured (or family members of officers who are killed) in the line of duty should contact the Workers’ Compensation Commission regarding possible eligibility for workers’ compensation benefits.

(2) Criminally Responsible Persons

A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, shall not be eligible to receive an award with respect to such claim. § 19.2-368.4(B)

(3) Unjust Benefit

A person is not eligible if he is a criminally responsible person who would unjustly benefit from an award. § 19.2-368.4(A)

WHO MAY FILE A CLAIM

(§ 19.2-368.5)

(A) ELIGIBLE PERSONS

Any person eligible to receive benefits under § 19.2-368.4 and § 19.2-368.11(E) may file a claim. For specifics concerning eligibility, see **Who May Receive Benefits** (pages 8-10).

(B) MINORS

When the eligible person is a minor, a parent or guardian must file on their behalf. § 19.2-368.5(A)

On occasion, a non-parent who has legal custody but not legal guardianship of a minor files a claim for benefits on the minor's behalf. In such a case, the Fund will accept the claim but will only make payments up to \$35,000 directly to service providers such as doctors and counselors. The Fund cannot make payments directly to a legal custodian who is neither the child's natural parent nor his legal guardian. (*Policy of the Commission, April 7, 1999*)

Custodians may wish to seek legal guardianship through the courts. If the custodian is unable to afford an attorney, he should contact local legal services organizations to see if he qualifies for low-cost or free legal aid. Only the legal aid organizations can determine whether claimants qualify for representation, whether the organizations handle legal guardian appointment cases, and whether it is advisable or possible for any particular person to seek appointment as a child's legal guardian.

(C) INCAPACITATED PERSONS

A guardian, conservator, or other individual authorized to administer the estate of an incapacitated person who is eligible for benefits may file a claim on behalf of the incapacitated person. § 19.2-368.5

(D) MULTIPLE CLAIMANTS

If a deceased victim has several relatives or dependents, each eligible person may file a claim. However, all claims that arise from the death of the same individual will be considered together. *See Subsection A of § 19.2-368.6* The Court of Appeals has held that this means if several relatives of one homicide victim file claims, the award will be apportioned among the claimants.

WHEN A CLAIM MUST BE FILED (§ 19.2-368.5)

(A) GENERAL RULE

In general, for crimes occurring on or after July 1, 2025, claims must be filed no later than **three (3) years** after the date of the crime.

For crimes committed between July 1, 2001 and June 30, 2025, claims must be filed no later than one year after the date of crime, unless good cause is shown.

For crimes occurring between July 1, 1998, and July 1, 2001, victims could not file more than two years past the date of the crime. Any claims for crimes occurring prior to July 1, 2001, will be returned to the claimant with an explanation for the return.

In cases where the crime was committed on or after July 1, 1977, and before July 1, 2001, the Commission may, for good cause shown, extend the time for filing a claim if the attorney for the Commonwealth submits written notice that the crime is being investigated as a result of newly discovered evidence. The Commission will consider only expenses that the claimant accrues after the date of newly discovered evidence as stipulated in the written notification by the attorney for the Commonwealth.

(B) WHEN THE VICTIM DIES

If the crime victim dies from a crime occurring on or after July 1, 2025, a claim must be filed no later than **three (3) years** after the date of death.

If the crime victims dies from a crime occurring between July 1, 2001, and June 30, 2025, a claim must be filed no later than one (1) year after the date of death.

(C) MINORS

If the claimant is a minor, the time for filing a claim is tolled as provided in subsection A of § 8.01-229. In general, the section provides that a minor must file his claim within **one (1) year after he is legally emancipated (see § 16.1-331) or reaches the age of majority, whichever occurs first**. Victims of child sexual assault may file up to ten years past the date of their eighteenth birthday. *See §19.2-368.5 (B)(iii)*

(D) INCAPACITATED PERSONS

Notwithstanding the provisions in Section A, if the victim is incapacitated, the time for filing a claim is tolled as provided in subsection A of § 8.01-229. Generally, an incapacitated person must file his claim within **three (3) years after the incapacity is removed**. However, **if a legal guardian or committee has been appointed, the claim must be filed within three (3) years after the date of the crime or within one (1) year after the appointment**, whichever occurs later.

(E) FORFEITURES

In a case involving claims made by a victim against profits of crime forfeited and held in escrow pursuant to Chapter 21.1 of Title 19.2 (§ 19.2-368.1 *et seq.*), the claim shall be filed within five years of the date of the order of forfeiture.

Any proceeds or profits received or to be received directly or indirectly, except property that may be forfeited to the Commonwealth pursuant to §§ 19.2-386.15 through 19.2-386.31, by a defendant or a transferee of that defendant from any source, as a direct or indirect result of his crime or sentence, or the notoriety which such crime or sentence has conferred upon him, shall be subject to a special order of escrow.

(F) GOOD CAUSE FOR DELAY

In cases other than those involving minors, incapacitated persons, or claims against forfeited property, upon good cause shown, the Commission in its discretion may extend the time for filing. Written explanation as to why the claimant waited longer than one year to file is required. This only applies to crimes occurring after July 1, 2001.

WHERE A CLAIM MUST BE FILED
(§19.2-368.5)

An application may be submitted via mail, fax, or in person. Victim advocates that have been through specialized training may file via WebFile, the Fund's online claims submission system.

Virginia Victims Fund
Post Office Box 26927
Richmond, VA 23261
Fax: (804) 823-6905

The application constitutes an affidavit and is made under oath under penalties of perjury.
§ 19.2-368.16

Applications are available from Victim/Witness offices throughout the Commonwealth and online at <http://www.virginiavictimsfund.org>.

All other documents in support of a claim can be accepted via fax at (804) 823-6905 or e-mail at info@virginiavictimsfund.org.

CRITERIA FOR AN AWARD

In order to make an award, the Commission must find that **(A)** a crime was committed; **(B)** the crime resulted in personal physical or emotional injury to, or death of, the victim; **(C)** the crime was promptly reported to law enforcement; **(D)** the claim was timely filed with the Fund; **(E)** the victim's loss is compensable under the Act; **(F)** the claim has a minimum value of \$100; **(G)** the claimant is eligible under the Act; and **(H)** if the crime did not occur in Virginia, the victim is a resident of Virginia who was (i) injured in another state, country, or territory that does not compensate nonresident crime victims, or (ii) injured or killed as a result of foreign terrorism. Each of these criteria is discussed below. Payment of a forensic exam under the SAFE program is not a guarantee of eligibility for the Fund.

(A) A CRIME OCCURRED

(1) Definition of Crime

In § 19.2-368.2, “crime” is defined as follows:

... an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-51.4 or 18.2-266 or from a felony violation of § 46.2-894.

(2) Lack of Arrest or Conviction

It is not necessary that the alleged criminal be apprehended, prosecuted for, or convicted of any crime based upon the incident. Claims shall be investigated and determined regardless of whether a defendant has been arrested, tried, convicted, acquitted, or found not guilty of a crime. § 19.2-368.6(C) § 19.2-368.10(3). If a case is dropped, nolle prosequi, or the offender is found not guilty, the Fund must be advised of the reason for this action to ensure that the victim cooperated with all prosecution efforts.

(3) Motor Vehicle Injuries

The definition of “crime” provides that no act involving the operation of a motor vehicle that results in injury shall constitute a crime for the purposes of the Act unless the injuries resulted from a violation of § 18.2-51.4.

This means that, ordinarily, injuries caused by motor vehicles cannot be compensated. There are three exceptions. First, if a driver intentionally injures

someone with an automobile, the Fund can consider an award. Second, if the injuries resulted from a violation of DUI laws (*driving under the influence*), the Fund will consider this a crime within the meaning of the Act. § 19.2-368.2 (Coverage of DUI crimes is mandated by VOCA. *See* subsection (b)(1) of 34 U.S.C. § 20101.) Third, § 46.2-894, commonly referred to as Felony Hit and Run, became an eligible compensable crime on July 1, 2012. Applications for this type of crime based on incidents occurring prior to July 1, 2012, cannot be considered as the law is not retroactive.

(a) Intoxication or DUI Offenses

If the victim was injured as a result of a violation of DUI laws, the injury may be compensable if intoxication on the part of the offender caused the victim's injuries.

A victim of a DUI accident will ordinarily be eligible under the Act if the offender (1) is convicted under § 18.2-266 or § 18.2-51.4; (2) refuses a blood alcohol test but is convicted; (3) has a blood alcohol level of .08 regardless of conviction; or (4) there is a preponderance of evidence of driver intoxication in information obtained through law-enforcement agencies or court records.

(b) Intentional Injury by Motor Vehicle

Under this exception to the general rule that an injury caused by a motor vehicle is not compensable, the Act requires that the driver actually intended to harm the victim.

(c) Duty of Driver to Stop in Event of Accident Involving Injury or Death

Commonly referred to as Felony Hit and Run, § 46.2-894, became an eligible compensable crime on July 1, 2012. Applications for this type of crime based on incidents occurring prior to July 1, 2012, cannot be considered as the law is not retroactive.

(4) Attempted Crimes

An attempted crime is an unfinished crime and is composed of two elements – the intent to commit the crime, and the doing of some act toward its consummation but falling short of the accomplishment of the ultimate design. Attempted crimes are crimes, and a defendant may be charged with and tried for an attempt, or a judge may reduce a criminal charge to an attempt. §§ 18.2-25 - 18.2-29 The Fund treats attempted crimes as crimes for the purposes of the Act. § 19.2-368.2

(B) THE CRIME RESULTED IN PERSONAL PHYSICAL/EMOTIONAL INJURY OR DEATH

The Act provides that no award shall be made unless the Commission finds that a crime directly resulted in personal physical or emotional injury to or death of the victim. §§ 19.2-368.2 and 19.2-368.10

Property damage cannot be compensated under the Act. Thus, if a car is stolen while the owner is away from the vehicle, the owner is certainly the victim of a crime, but he has suffered no personal injury and will be unable to recover the value of his car from the Fund. Consistent with federal law, the exception to this policy is replacement of windows and locks of the victim's residence damaged as a result of a crime as defined in §19.2-368.2.

VOCA allows the Fund to reimburse crime victims for clothing or bedding taken as evidence. In order to reimburse this expense, the Fund must have a copy of the evidence receipt provided to the victim by a law-enforcement agency. The Fund must also have a receipt for the purchase of a like item that matches the description of the items on the evidence receipt.

Although the Fund has no authority to compensate victims for property loss, damage to property that is inseparable from a personal injury can qualify as a medical expense and may be compensable. For instance, if a person has a prosthetic leg and the artificial limb is damaged during an assault, the Fund will treat the loss as a personal injury and pay for a replacement prosthesis. The Fund will reimburse victims for prosthetic devices that are lost or damaged in the course of being subject to a crime as defined in §19.2-368.2. Prosthetic devices are defined as items needed by the victim to perform daily activities such as walking, eating, or dressing. Some examples of prosthetic devices are eyeglasses, contact lenses, dentures, and artificial limbs. In order to determine if the device is a true prosthetic, the Fund will consider the span of time between the incident and the purchase of the item.

(C) THE CRIME WAS PROMPTLY REPORTED TO PROPER AUTHORITIES

For crimes occurring on or after July 1, 2025, police or court records must show the crime was promptly reported to proper authorities. In determining whether a crime was promptly reported, the Commission shall consider (1) any police records; (2) the victim's physical, emotional, mental, and family situation; and (3) the existence of a permanent protective order, issued pursuant to § 16.1-279.1 or 19.2-152.10, for the victim or other persons eligible for awards from the person responsible for the qualifying crime. Victims of child sexual assault are exempt from this requirement.

(D) THE CLAIM WAS TIMELY FILED

For specifics concerning filing period, see **When A Claim Must Be Filed** (page 12).

(E) THE CLAIMANT'S LOSS IS COMPENSABLE UNDER THE ACT

For specifics concerning what benefits are available, see **Available Benefits** (page 44).

Expenses that are generally compensable include wage loss, loss of support from a deceased victim, unreimbursed medical expenses, funeral or burial expenses, counseling, expenses attributable to pregnancy resulting from forcible rape, moving expenses, and other reasonable, necessary, and appropriate expenses. Generally, the Fund does not pay for property loss. The Commission lacks authority to award attorneys' fees. § 19.2-368.11:1

(F) THE CLAIM HAS A MINIMUM VALUE OF \$100

The Act provides that to qualify for an award, a claim must have a minimum value of \$100 after being reduced as provided in subsection G. § 19.2-368.11:1(H) If the value of the claim exceeds \$100, and the individual is an eligible claimant, but there are no expenses that can be paid by the Fund, the claim will receive an award for "*record purposes only*." This means that the claim was valued at \$100, but there were no eligible expenses for which the Fund could pay. The claimant is allowed two years from the date of filing to submit additional items for payment.

(G) THE CLAIMANT IS ELIGIBLE UNDER THE ACT

For specifics concerning eligibility, see **Who May Receive Benefits** (pages 8-10).

(H) CRIME LOCATION AND VICTIM'S RESIDENCY

As long as the crime was committed in Virginia, there is no requirement that the victim be a Virginia resident or United States citizen to be eligible for an award under the Act. However, crimes that occur outside Virginia are generally not compensable. There are two exceptions.

First, the Fund may compensate Virginia residents who are injured or killed in foreign countries or as a result of foreign terrorism. § 19.2-368.2 The Office for Victims of Crime (OVC) of the US Department of Justice operates the International Terrorism Victims' Expense Reimbursement Program (ITVERP). If a Virginia resident is injured during foreign terrorism occurring abroad, they may recover under the Virginia program after applying to ITVERP.

Second, the Fund may compensate Virginia residents who are victims of compensable crimes in foreign countries or territories that do not have funding mechanisms for crime victims [for crimes occurring after July 1, 2002, enactment date of § 19.2-368.4(C)(ii)]. The Office for Victims of Crime maintains a list of foreign countries that have crime victim compensation programs. Please visit their website at www.ovc.gov.

In summary, if a Virginia resident is injured during a crime occurring outside of the Commonwealth, they should apply for benefits with the crime victims' compensation program in the state, country, or territory where the crime occurred.

A list of state compensation programs can be found at www.nacvcb.org or by calling the National Association of Crime Victim's Compensation Boards at (703) 780-3200. [See, e.g. [U.S. Justice Department, Office for Victims of Crime, NEW DIRECTIONS FROM THE FIELD: VICTIMS' RIGHTS AND SERVICES FOR THE 21ST CENTURY, pp. 325, 353 \(1997\).](#)]

GROUNDINGS FOR DENIAL OR REDUCTION OF BENEFITS

(A) CONDUCT BY A VICTIM OR CLAIMANT THAT MAY REDUCE OR BAR AN AWARD

The following circumstances in which conduct by a claimant or victim may reduce or bar an award under the Act: **(1)** the claimant is criminally responsible for the crime; **(2)** a person who is criminally responsible for the crime will unjustly benefit from an award; **(3)** the victim failed to promptly report the crime; and/or **(4)** the victim contributed to his injuries. Each of these bases for reducing or denying benefits is discussed below.

(1) Criminal Responsibility for Crime

Subsection B of § 19.2-368.4 provides:

A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, shall not be eligible to receive an award with respect to such claim.

Note that the statute completely bars any recovery by a principal, accomplice, or accessory to the crime underlying a claim. The statute explicitly states that such persons are ineligible for an award.

(2) Unjust Benefit to a Criminally Responsible Person

The Fund cannot make an award that would directly and unjustly benefit a person who is criminally responsible. § 19.2-368.4(A)

The Fund will not deny an award on the grounds of unjust benefit based solely on the presence of the offender in the claimant or victim's household at the time of the award. Subsection (b)(7) of 42 U.S.C. § 10602 provides that in order to be eligible for federal funding, state crime victims' compensation programs must offer compensation to domestic violence victims and must not deny compensation to any victim because of that victim's familial relationship to the offender or because of the sharing of a residence by the victim and the offender, except pursuant to rules issued by the program to prevent unjust enrichment of the offender. The presence of the offender in the household is only one factor to be considered in determining unjust

enrichment. The Fund will consider the facts of each situation and make a case-by-case determination when deciding whether the offender will be unjustly enriched.

When the victim and the offender are members of the same family, the Fund will evaluate whether or not the victim (i) has reported the crime, (ii) is cooperating with all law-enforcement agencies in the investigation and prosecution of the crime, and (iii) will do what is possible to prevent access by the offender to compensation paid to the victim. If the victim is cooperating fully, and if the offender will not benefit from or have access to any cash award made by the program to the victim, then the award shall not be denied on the basis that the offender would be unjustly enriched. When the victim is a minor, the Fund will examine the same factors with respect to the individual who makes the claim on behalf of the minor.

In determining whether enrichment is substantial or inconsequential, factors to be considered include the amount of the award and whether a portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

When unjust benefit is at issue, the Fund will make payments directly to third-party providers whenever possible to prevent cash intended to pay for the victim's expenses from being used by or on behalf of the offender. In other words, the Fund may prevent an offender from using a cash award for himself by paying a doctor or counselor directly, ensuring that the offender has no opportunity to divert the award.

With regard to claims from or on behalf of abused children, the Fund will not penalize child victims by denying or delaying payment when offender or collateral resources are not forthcoming. Third-party payments will be made whenever possible to prevent or minimize unjust enrichment of offenders living with abused children. The Fund may also consider establishment of a trust arrangement to guarantee that the award is used for the purposes it is intended, such as payment of mental health counseling.

(3) Failure to Promptly Report the Crime

No award shall be made unless the Commission finds that police records show that the crime was promptly reported to the proper authorities. Victims of child sexual assault are exempt from this rule. §19.2-368.10(3)

(4) Victim’s Contribution to Injuries

(a) Statutory Standards

When determining the amount of an award, the Commission must determine whether, because of his conduct, the victim of a crime contributed to the infliction of his injury. The Commission shall reduce the award or reject the claim altogether, in accordance with such determination. § 19.2-368.12(C)

In 1998, the General Assembly amended § 19.2-368.6 by adding subsection D, which provides that “*there shall be a rebuttable presumption that the claimant did not contribute to and was not responsible for the infliction of his injuries.*”

In addition, the Commission may disregard a victim’s responsibility for his own injury altogether, if the records show the victim was trying to prevent a crime from occurring in his presence or trying to apprehend a person who committed a crime in his presence. § 19.2-368.12(C)

(b) Application of Standards

When a claim is made by the survivors of a homicide victim, the victim’s contribution to his injuries can bar or reduce the award for the survivors. In other words, survivors stand in the shoes of the victim with respect to contribution. If the victim contributed to his injury, his survivors may receive a reduced award or no award at all. This is true even if the survivors did nothing, personally, that might cause the award to be denied or reduced.

Deciding whether a victim was responsible for his own injury requires a factual determination by the person to whom the claim is assigned.

Illustration

Y pulls a knife on X and robs him. X defends himself by shooting Y. Y dies, and X is charged with involuntary manslaughter. Y’s grandmother files for funeral expenses. The grandmother’s claim will be denied, because Y was committing the crime upon which the claim was based.

(B) FAILURE TO PERFECT CLAIM

(1) General

Section 19.2-368.5:1 of the Act provides:

“If, following the initial filing of a claim, a claimant fails to take such further steps to support or perfect the claim as may be required by the Commission within 180 days after written notice of such requirement is sent by the Commission to the claimant, the claimant shall be deemed in default. If the claimant is in default, the Commission shall notify the claimant that the claim is denied and the claimant shall be forever barred from reasserting it; however, the Commission may reopen the proceeding upon a showing by the claimant that the failure to do the acts required by the Commission was beyond the control of the claimant.”

(2) When Information Is Not Received

The assigned claims examiner reviews the claim at set-up, when new mail is received, and at regular intervals. When adequate information has been received, the Fund will make the appropriate decision to award or deny benefits.

The Fund will mail written notices to the claimant in an attempt to obtain required documentation. These notices will specify the information that has not been received and the identity of the person or organization believed to have the information. The first written notice, commonly called the “acknowledgement letter,” is the “*written notice*” referred to in the above-quoted statute. The claimant has 180 days from the date of this letter to obtain the requested information and forward it to the Fund. § 19.2-368.5:1

Claimants bear ultimate responsibility for ensuring that the Fund receives the documentation required to make a determination on their claim. Failure to provide the information requested by the Fund, provide change of address information, or assist the Fund with obtaining documents may result in the denial of the claim. Any claimant who needs assistance with perfecting their claim should contact the Fund.

(C) REIMBURSEMENT FROM COLLATERAL RESOURCES

(1) General

After determining the amount of an award, the Fund will reduce the award by what is informally called “collateral resources.” Virginia Code directs that awards “*shall be reduced by the amount of any payments received or to be received as a result of the injury from or on behalf of the person who committed the crime or from any other public or private source*” (emphasis added). § 19.2-368.11:1(G)

The Fund’s definition of *public funds* is a program funded in whole or in part with monies received from a state or federal government, including but not limited to (a) Medicare and Medicaid, (b) Social Security, and (c) healthcare provider financial assistance/charity care. *Private funds* are defined as (d) health insurance, (e) life insurance, (f) funeral/burial insurance, (g) income from a deceased victim’s estate, (h) disability insurance, (i) workers’ compensation, (j) sick leave or short-term disability leave, (k) court-ordered restitution, (l) homeowners’ and renters’ insurance, (m) automobile insurance, and (n) civil suits.

A victim may meet the requirements for an award, but the victim's benefits may be reduced to zero when the collateral resources exceed the Fund’s \$35,000 maximum award. *In re: Claim of Quillen, CICF File No. 88-0678, Opinion by Tarr, Chief Deputy Commissioner (December 12, 1988)* For instance, if a claimant has health insurance, the Fund will pay only the amount that is considered the insured’s responsibility (*e.g., co-pay, coinsurance, deductible*) as demonstrated by the insurance carrier’s explanation of benefits. For this reason, claimants must submit records that demonstrate how much has been paid by others on their behalf.

When the victim and the perpetrator are members of the same family, collateral resources available to the victim from the offender shall be examined. Collateral resources may include court-ordered restitution, an offending spouse's medical insurance, or other resources of the offender available to cover the victim's expenses. In evaluating the availability of collateral resources, a determination shall be made (i) as to whether the offender has a legal responsibility to pay, (ii), whether the offender has resources to pay, and, (iii) whether payment is likely. The victim should not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery.

This policy was updated March 27, 2019.

(2) Payments That Are Counted as Collateral Resources

(a) Medicare and Medicaid

Medicare issues a statement similar to those of private insurance companies. Copies of statements are sent to the insured person informing them of what has been paid and what they are responsible for paying.

Claimants should submit copies of the Medicare and/or Medicaid explanation of benefits (EOBs). It is important for claimants to keep copies of their EOBs otherwise it may cause delays in processing their claim. The Fund may request this information from the victim's medical provider in order to expedite claims processing.

Payments by Medicare and Medicaid are deducted from criminal injuries awards as collateral resources. For information about eligibility and application requirements, contact any local Department of Social Services (DSS) office or the Department of Medical Assistance Services (DMAS).

(b) Social Security Benefits

Social Security Disability and Supplemental Security Income (SSI) benefits are paid as a result of injury or death and, therefore, are deducted from awards for wage loss and loss of support.

In the case of injury, if the victim's disability is expected to extend past twelve months, he or she may be eligible for Social Security or Social Security Disability benefits. The Fund may reimburse loss of income incurred during the mandatory five (5)-month waiting period; however, the Fund will seek redress of award payment from the victim in the event he or she receives retroactive benefits.

In the case of death, if monthly payments are lower than the victim's normal wages, the Fund will utilize wage loss calculations in § 19.2-368:11.1 (A)(B) to determine if the victim's dependents are eligible for payment from the Fund.

(c) Healthcare Provider Financial Assistance/Charity Care

The Commonwealth of Virginia requires certain licensed medical facilities to provide a certain amount of charity care annually as a condition of their certificates of need granted by the Virginia Department of Health. Each medical facility determines its own rules for the approval and distribution of charity care. Claimants who are uninsured or have catastrophic injuries may be eligible for charity care benefits from the facility where they received care. This financial assistance may also extend to providers who treated the victim at that facility (*e.g., radiologists, anesthesiologists, emergency room physicians*). All claimants who may be eligible are strongly urged to apply for financial assistance to ensure they receive the most benefit from all the benefits available to them and to help preserve available VVF monies for expenses that may arise in the future.

(d) Health Insurance Benefits

Claimants should submit copies of their insurance provider's explanation of benefits (EOBs). It is important for claimants to keep copies of their EOBs as it can be difficult for the Fund to obtain copies from insurance companies. The Fund also requests this information from the victim's medical provider in order to expedite claims processing.

The Fund will only pay medical expenses that are not reimbursed through insurance or other sources. When the claimant or victim has insurance, the Fund will pay deductibles, co-payments, coinsurance, and charges that are not covered as long as the expenses are appropriate and reasonably incurred. § 19.2-368.11:1 Should the claimant have medical insurance, the Fund will not require the use of in-network providers.

If the service provider does not file claims directly to the insurance carrier, the claimant is required to do so and to submit EOBs as described above.

(e) Life Insurance

Life insurance is generally designed to compensate for loss of companionship and financial support; therefore, it is considered a collateral resource and is deducted from awards for loss of support. **Jennings v. Division of Crime Victims' Comp., 5 Va. App. 536, 365 S.E.2d 241 (1988)**

Life insurance is deducted from awards for funeral expenses. *Policy of the Commission, May 29, 2003*

Life insurance is not deducted from awards for survivor counseling. *In re: Claim of Albrecht, CICF File No. 98-1236, Opinion by Diamond, Chairman (April 2, 1999)*

(f) Funeral/Burial Insurance

Payments from funeral or burial insurance, automobile insurance, and life insurance are deducted from an award for funeral or burial expenses. (*Policy of the Commission, May 29, 2003*) If the individual taking responsibility for the funeral contract is not the beneficiary of the life insurance policy, the Fund cannot consider it a collateral resource for funeral expense. The Fund will not deduct Social Security death benefits or the value of a victim's estate from an award for funeral expenses. (*Policy of the Commission, April 7, 1999*)

(g) Income from a Deceased Victim's Estate in Excess of \$35,000

The Fund will not deduct the value of a victim's estate from an award for funeral expenses.

When a victim dies and leaves an estate, the amount of the estate that exceeds \$35,000 is a collateral resource to their claim. The criminal injuries award to a surviving claimant will be reduced by the amount the claimant actually received from the victim's estate in excess of \$35,000. (*Policy of the Commission, June 5, 2012*)

Illustration

X dies and leaves \$6,000 to his sister. The sister's criminal injuries award will not be reduced at all, as the sister received less than \$35,000 from X's estate.

(h) Disability Insurance

Payments made by employers or others as a result of injuries, including benefits under short- and long-term disability policies, will be deducted from criminal injuries awards.

(i) Workers' Compensation

Sometimes, the same facts that give rise to a criminal injuries claim may make a claimant eligible for workers' compensation benefits. For instance, if a cashier at a convenience store is shot during a hold-up, he may be eligible to receive workers' compensation. If this is the case, a victim is required to apply for workers' compensation. The Fund may defer ruling on the criminal injuries claim until it is known what amount, if any, the claimant will receive from workers' compensation. If no award is received from workers' compensation, the criminal injuries claim will be processed. If a workers' compensation award is received, the criminal injuries claim will not be paid. The exception to this rule is that the Fund can consider those expenses disallowed by workers' compensation (*e.g., first week of wage loss, moving expenses*). However, it should be clear that the Fund does not make up any difference between the victim's expenses and the amount workers' compensation pays. If the victim does not agree with the workers' compensation decision, he may utilize VWC's available appeal process.

(j) Sick Leave or Short-Term Disability Leave

In wage loss claims, the Fund will not compensate a victim for time away from work that was covered by sick leave, short-term disability, long-term disability, or other donated leave. These benefits are provided by employers to employees for illness or injury and, accordingly, are deducted from wage loss awards.

Victims are not required to take vacation leave for disability caused by a crime; however, if they have already done so when the VVF claim is filed, it cannot be reimbursed.

(k) Court-Ordered Restitution

When a court orders an offender to pay restitution to a victim, either as part of a plea agreement or as part of a sentence, amounts paid or to be paid by the perpetrator may be deducted from criminal injuries awards. Subsection G of §19.2-368.11:1 specifically provides that the Fund is to reduce any award by the amount of any payments received or to be received as a result of the injury from or on behalf of the person who committed the crime. If restitution payments are redirected to the Fund by the restitution monitor, the amount will not be deducted from an award.

In family violence cases, if the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impedes payment of insurance that may be available to cover a spouse's or child's expenses, the Fund should attempt to meet the victim's needs to the extent allowed. However, the Fund will exercise its subrogation rights under § 19.2-368.15 and seek to recover any award under the Act from offenders who have been ordered to make restitution. In such cases, the Fund will notify a victim of its intent to pursue its subrogation rights against the offender, so that the victim can make informed decisions about their safety.

In order for the Fund to collect against a perpetrator, information is required on the disposition of the court case. The Fund will not issue an initial award or supplemental awards without the current status of the court case. In all cases where an individual is tried for a crime on which a claim is based, the Fund will request a copy of the sentencing order.

(l) Homeowners' and Renters' Insurance

When a covered crime occurs in the victim's residence, the claimant should file a claim with his homeowner's or renter's insurance and report all payments received to the Fund.

(m) Automobile Insurance

Any victim injured by or while in a motor vehicle must file a claim under any motor vehicle insurance policy available to him. This may include, but is not limited to, the medical coverage or uninsured/underinsured motorist provisions with his personal automobile insurance carrier or the insurance policy for the vehicle causing the injury. This coverage will usually pay benefits up to a fixed amount without regard to whether the victim's vehicle was involved in the incident. For example, payment may be made to a

victim who is injured while a pedestrian or a passenger in the vehicle of another.

Some specific examples in which the Fund would expect to see an automobile insurance claim include victims who are (i) intentionally struck by a vehicle, (ii) involved in a DUI accident, or (iii) victims of felony Hit and Run.

(n) Civil Suits

If the claimant recovers damages through civil litigation related to the crime, he must repay any awards received by the Fund. The Fund may make the award in advance to settlement upon the claimant's attorney's agreement to repay the Fund.

(3) Payments That Are Not Counted as Collateral Resources

- (a)** Homes, cars, bank accounts, or other assets
- (b)** Credit available through banks or other financial institutions
- (c)** Income from parent or guardian when victim is a minor
- (d)** Financial assistance from family to the claimant
- (e)** Donations/contributions made for the victim or their family members (*e.g., GoFundMe, church donations, fundraisers, etc.*)
 - Exception: Reimbursement will be offset by donations that have been paid directly to a service provider for crime-related expenses when record of payment received by the Fund verifies the expense was covered by donated monies.
- (f)** Temporary Aid to Needy Families (TANF)
- (g)** Food stamps

(4) Allocating Collateral Resources

When several claimants file for an award based on the death of an individual, collateral resources will only be deducted from the award of the person or persons actually receiving those benefits. The Fund does not combine the collateral resources of multiple claimants and deduct the combined total from the maximum award.

(5) Continuing Payments from Collateral Resources

Sometimes benefits received as collateral resources are paid in installments over a protracted period of time. Such benefits may be subject to reduction or termination. Workers' compensation benefits and Social Security payments are the best examples of such benefits. If the Fund reduces an award by periodic payments and the payments are later reduced or terminated, the Fund will review its decision.

(D) ELIGIBLE CRIME TYPES AND EXPENSES TIED TO DATE OF ENACTMENT

Through the history of the Fund, eligible crime types have been added or expanded. For example, stalking was added as a compensable crime in 2008. Benefit amounts and types have also changed over time. When items have been changed by law or policy, the changes are not retroactive. The claim and relevant benefits can only be considered in the context of what was allowable as a matter of law and/or agency policy on the date of the crime incident.

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