

## CHAPTER 54-23.4 CRIME VICTIMS COMPENSATION

### 54-23.4-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Bodily injury" means any harm that requires medical treatment and results in economic loss and includes pregnancy and nervous shock.
2. "Claimant" means a victim, a dependent of a deceased victim, or a representative of either, who claims compensation under this chapter.
3. "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable under this chapter which the claimant has received, or which is readily available to the claimant. The first twenty-five thousand dollars of a life insurance policy are not a collateral source if they are payable to a dependent beneficiary or to a parent, legal guardian, or conservator of a dependent victim.
4. "Criminally injurious conduct" means conduct that results in bodily injury or death, and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct was a minor or lacked capacity to commit the crime. The term includes an act of terrorism, as defined under Public Law No. 102-572 [106 Stat. 4506; 18 U.S.C. 2331], committed outside of the United States against a resident of this state. The term does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle except when intended to cause personal injury or death or when the division determines that the conduct was in violation of section 12.1-16-02, 12.1-16-03, 39-08-01, 39-08-03, 39-08-04, or 39-08-06.
5. "Dependent" means a natural person wholly or partially dependent upon a victim for care or support and includes a child of a victim born after the victim's death.
6. "Division" means the division of adult services of the department of corrections and rehabilitation.
7. "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and, if injury causes death, dependent's economic loss and dependent's replacement services loss. Noneconomic detriment is not loss. The term includes economic detriment caused by pain and suffering or physical impairment.
  - a. "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations required due to the injury, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care. The term includes a total charge not in excess of five thousand dollars for expenses in any way related to funeral, cremation, and burial. The term does not include that portion of a charge for a room in a hospital, clinic, convalescent or nursing home, or any other institution engaged in providing nursing care and related services, in excess of a reasonable and customary charge for semiprivate accommodations, unless the excess represents costs of other accommodations that are medically required.
  - b. "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to a victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death.
  - c. "Dependent's replacement services loss" means loss reasonably incurred by a dependent after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for the dependent's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.
  - d. "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage.

- e. "Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income but for the benefit of the victim or the victim's family, if the victim had not been injured.
  - f. "Work loss" means loss of income from work the victim would have performed if the victim had not been injured, and expenses reasonably incurred by the victim in obtaining services in lieu of those the victim would have performed for income, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing but unreasonably failed to undertake.
8. "Victim" means a person who suffers bodily injury or death as a result of criminally injurious conduct, the good-faith effort of any person to prevent criminally injurious conduct, or the good-faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct. The term includes a resident of this state who is injured or killed by an act of terrorism, as defined under Public Law No. 102-572 [106 Stat. 4506; 18 U.S.C. 2331], committed outside of the United States. The term does not mean a person who suffers bodily injury or death as a result of operating a motor vehicle, when, at the time of the injury or death, the person was not in compliance with applicable state laws and rules concerning motor vehicle insurance coverage and the person was at least partially at fault for causing the accident.

**54-23.4-02. Award of compensation.**

The division shall award compensation for economic loss arising directly from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

**54-23.4-03. No award paid to inmates.**

The division may not make an award of any kind under this chapter to a victim convicted of a crime and injured while confined in a jail, prison, or other correctional facility.

**54-23.4-04. Powers and duties of the division.**

1. In addition to its other powers and duties, the division shall:
  - a. Establish and maintain a principal office and other necessary offices within this state, appoint employees and agents as necessary, and prescribe the duties and compensation of the employees and agents.
  - b. Adopt and enforce rules necessary to implement this chapter. All fees on claims for legal, medical, mental health, and hospital services, and the manner in which economic loss benefits are calculated, must be in accordance with the schedules of fees adopted by the division.
  - c. Prescribe forms for applications for compensation.
  - d. The duty to hear and determine all matters relating to claims for compensation, and the power to reinvestigate or reopen claims without regard to statutes of limitations or periods of prescription.
  - e. Publicize widely the availability of compensation and information regarding the filing of compensation claims.
2. The division may:
  - a. Request from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether, and the extent to which, a claimant qualifies for compensation. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under this chapter.
  - b. Take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge.

**54-23.4-05. Restitution funds, gifts, grants, and bequests - Restitution and gift fund.**

The division may accept on behalf of the state all restitution funds, gifts, grants, or bequests of property tendered to the state for any purpose pertaining to the activities of the division in implementing this chapter. The crime victims restitution and gift fund is established as a special fund in the state treasury. All restitution funds, gifts, grants, and bequests of property or money, and any interest occurring thereon, must be placed in the crime victims restitution and gift fund. Subject to legislative appropriation, the fund may be used and disbursed by the division in accordance with the terms of the payment or donation or, if there are no terms, for costs and expenses incurred by the division in the implementation of this chapter.

**54-23.4-06. Application for compensation - Awards - Limitations on awards.**

1. An applicant for an award of compensation shall apply in writing in a form that conforms substantially to that prescribed by the division. If a resident of this state is a victim of criminally injurious conduct, but the criminally injurious conduct occurred outside the geographical boundaries of this state, the resident has the same rights under this chapter as if the criminally injurious conduct occurred within this state upon a showing that the state, territory, country, or political subdivision of the country in which the criminally injurious conduct occurred does not have a crime victims compensation law which covers the bodily injury or death of the victim.
2. A claim for compensation must be filed within one year from the date the criminally injurious conduct was reported to a law enforcement officer. The division may extend the time for filing if it determines that the interests of justice so require. There is no appeal from a decision of the division not to extend the filing time, not to reopen, or not to reinvestigate a claim.
3. Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender, nor to any claimant if the award would unjustly benefit the offender or an accomplice.
4. Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within ninety-six hours after its occurrence or the division finds there was good cause for the failure to report within that time. In the case of child abuse or sexual molestation of a child, the criminally injurious conduct must be reported to a law enforcement officer within three years after the child reaches the age of majority.
5. The division, upon finding that the claimant has not fully cooperated with appropriate law enforcement agencies, may deny, reconsider, or reduce an award of compensation.
6. Compensation otherwise payable to a claimant must be reduced or denied:
  - a. To the extent the economic loss upon which the claim is based is recouped from other persons, including collateral sources;
  - b. To the extent the division deems reasonable because of the contributory misconduct of the claimant or of a victim on whose behalf compensation is claimed; and
  - c. To the extent the division deems reasonable when it is determined that a victim was under the influence of an alcoholic beverage or a controlled substance at the time the criminally injurious conduct occurred and the victim's intoxication was a factor causing the criminally injurious conduct.
7. Compensation for work loss, replacement services loss, dependent's economic loss, and dependent's replacement services loss may not exceed three hundred dollars per week.
8. Compensation payable to a victim and to all other claimants sustaining economic loss because of injury to or death of that victim may not exceed twenty-five thousand dollars in the aggregate. If a resident of this state is the victim of criminally injurious conduct outside the geographical boundaries of this state and the total amount of crime victims compensation benefits payable where the criminally injurious conduct occurred is less than twenty-five thousand dollars, the division may pay additional compensation to the victim. The maximum additional compensation the division may

pay is the difference between twenty-five thousand dollars and the total amount of crime victims compensation benefits payable where the criminally injurious conduct occurred.

**54-23.4-07. Informal hearing - Rehearing.**

After an informal hearing on the papers submitted, at which the claimant need not be present, the division may accept, deny, or reduce a claim or set it for rehearing. If a claim is reduced or denied by the division, the claimant may request a rehearing or appeal the decision. The claimant must be notified of the right to rehearing or appeal.

**54-23.4-08. Evidence of physical condition.**

1. There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the victim in a proceeding under this chapter in which that condition is an element.
2. If the mental, physical, or emotional condition of a claimant is material to a claim, the division may order the claimant to submit to a mental or physical examination by a doctor or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order must specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and must require the person who performs the examination to file with the division a detailed written report of the examination or autopsy. The report must set out the examining person's findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.
3. On request of the person examined, the division shall furnish that person with a copy of the examination report. If a deceased victim is autopsied, the division, on request, shall furnish the claimant a copy of the autopsy report.
4. The division may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which compensation is claimed.

**54-23.4-09. Enforcement of division's orders.**

If a person refuses to comply with an order under this chapter or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the division may make any just order including denial of the claim, but may not find the person in contempt. If necessary to carry out any of its powers and duties, the division may petition the district court for an appropriate order, but the court may not find a person in contempt for refusal to submit to a medical or physical examination.

**54-23.4-10. Award and payment of compensation.**

1. An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction, or certiorari is pending, or a rehearing or new trial has been ordered.
2. The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but may make a tentative award under section 54-23.4-14.
3. A claim for crime victims compensation benefits is presumed closed if the division has not paid any benefit or received a demand for payment of benefits for a period of five years from the date a payment was last made on a claim. A claim that is presumed closed may not be reopened for payment of any further benefits unless the presumption is rebutted by a preponderance of the evidence that the criminally injurious conduct is the principal cause of the current symptoms.

4. A claim for crime victims compensation benefits must be closed ten years after benefits have last been paid and may not be reopened.
5. This section applies to all claims for crime victims compensation benefits, irrespective of the date of the criminally injurious conduct.

**54-23.4-11. Attorney's fees.**

The division shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant if the claimant prevails after a petition for reconsideration or rehearing under section 28-32-40 from an order reducing or denying crime victims compensation benefits. A district court may award attorney's fees in an appeal pursuant to section 28-32-42 if the claimant prevails on appeal from an order reducing or denying benefits. Attorney's fees are allowable for settlement of a disputed claim. Attorney's fees are not allowable for assisting a claimant in filing a claim. An award of attorney's fees is in addition to an award of compensation. An award of attorney's fees may not exceed the lesser of twenty percent of the compensation awarded or one thousand dollars. No attorney may contract for or receive any larger sum than the amount allowed.

**54-23.4-12. Subrogation - Actions - Allocation of expenses.**

1. If compensation is awarded, the division is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that compensation is awarded, from a source that is, or, if readily available to the claimant, would be, a collateral source.
2. Before bringing an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant shall give the division written notice of the proposed action. If a claimant brings an action for the recovery of damages related to criminally injurious conduct for which compensation is claimed or awarded, the division is subrogated to the rights of the claimant up to the total amount the division has paid. When there has been a recovery of damages, the costs of the action, to be paid by the division from the recovery, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the division recovered to the total recovery. If there is a recovery, the division shall pay attorney's fees to the claimant's attorney from the recovery in the amount of twenty-five percent of the subrogation interest recovered. For purposes of this section, recovery includes proceeds paid pursuant to a settlement, confession of judgment, or judgment of a court. The division may intervene in the action to recover compensation awarded. The division has a lien on a recovery to the extent it has paid compensation. The division is not liable for costs or attorney's fees when the claimant has not provided the division prior written notice of the commencement of an action. If a claimant does not bring an action for damages within six months from the date the division awarded benefits, the division may bring an action or claim for relief in the division's name and may retain as the division's subrogation interest the full amount the division has paid in compensation and benefits to a claimant. The division may bring an action within two years from the date the division first awarded benefits, notwithstanding any other statute of limitation. This section does not limit the claimant's right to bring an action to recover for other damages.
3. If a judgment or verdict indicates separately economic loss and noneconomic detriment, payments on the judgment must be allocated between them in proportion to the amounts indicated. In an action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages, and economic loss.

**54-23.4-13. Manner of payment - Nonassignability and exemptions.**

1. The division may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the

award must be paid in a lump sum. An award for allowable expense that would accrue after the award is made may not be paid in a lump sum. Except as provided in subsection 2, the part of an award that may not be paid in a lump sum must be paid in installments.

2. At the request of the claimant, the division may commute future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the division that:
  - a. The award in a lump sum will promote the interests of the claimant; or
  - b. The present value of all future economic loss other than allowable expense does not exceed one thousand dollars.
3. An award for future economic loss payable in installments may be made only for a period as to which the division can reasonably determine future economic loss. The division may reconsider and modify an award for future economic loss payable in installments, upon its finding that a material and substantial change of circumstances has occurred.
4. An assignment or agreement to assign a right to compensation for loss accruing in the future is unenforceable, except:
  - a. An assignment of a right to compensation for work loss to secure payment of alimony, maintenance, or child support; or
  - b. An assignment of a right to compensation for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.
5. No funds may be placed in reserve by the division on any claim.

#### **54-23.4-14. Tentative awards.**

If the division determines that the claimant will suffer financial hardship unless a tentative award is made, and it appears likely that a final award will be made, an amount may be paid to the claimant which must be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

#### **54-23.4-15. Reconsideration and review of decisions.**

1. The division, on its own motion or on request of the claimant, may reconsider a decision making or denying an award or determining its amount. The division shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.
2. The right of reconsideration does not affect the finality of a decision of the division for the purpose of judicial review.

#### **54-23.4-16. Reports.**

The division shall prepare and transmit biennially to the governor and the legislative assembly a report of its activities, including a brief description of the facts, the amount of compensation awarded in each case, and a statistical summary of claims and awards made and denied.

#### **54-23.4-17. Confidentiality of records.**

Juvenile or law enforcement records obtained under chapter 27-20 may be released to the parties, their counsel, and representatives of the parties in proceedings before the division and must be sealed at the conclusion of the proceedings. All other records of the division concerning the application for or award of compensation under this chapter are confidential and are not open to public disclosure. Inspection of these records, however, must be permitted by:

1. Law enforcement officers when necessary for the discharge of their official duties.
2. Representatives of a claimant, whether an individual or an organization, who may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant.

3. Physicians or health care providers treating or examining persons claiming benefits under this title, or physicians giving medical advice to the division regarding any claim, at the discretion of the division.
4. Any person who is rendering assistance to the division at any stage of the proceedings on any matter pertaining to the administration of this chapter.
5. Juvenile or law enforcement records obtained under chapter 27-20 may be released to the parties, their counsel, and representatives in proceedings before the division and must be sealed at the conclusion of the proceedings.

**54-23.4-18. Filing false claim or false statements - Penalty.**

Any claimant who knowingly makes a false claim, or a false statement in connection with any claim, is guilty of a class A misdemeanor. In addition to any other penalties provided by law, the claimant who violates this section forfeits any compensation paid under this chapter and must reimburse the program for any benefits paid.