Crime Victim Services Section

Objectives

- Participants will know the following:
  - Purpose of the compensation program
  - Eligibility requirements
  - Expenses eligible for compensation
  - Where to go for help and further information

How is the Compensation Program Funded?

- Court costs paid by one convicted of a crime
- Subrogation efforts
  - The state may sue the offender to recover crime victim compensation monies paid to victim/claimant.
  - The victim or claimant must give the Attorney General's office written notice of all related lawsuits/settlements
- Federal VOCA funds
- Reinstatement fees for drivers licenses after OMVI/DUI suspension
- <u>Ohio taxpayers do not bear program costs</u>

Does a Claimant or Victim Have to Pay an Attorney to Apply?

NO!

The claimant or victim can apply without an attorney.

An advocate can assist throughout the process without any expense to the program

OR

The program will pay for the attorney.

- *This will not reduce the money the claimant or victim receives!*

Maximum attorney fees - $60 per hour

Filing Requirements

- If the victim was an adult, at anytime after the occurrence of the incident
- If the victim was a minor or a minor dependent of a deceased victim they must file by their 20th birthday
- The minor victim may also file within 2 years after their offender is charged with the crime, regardless of the age of the victim when the complaint, indictment or information is filed

Who is Eligible?

- Adult and child victims of criminally injurious conduct.
  - Criminally Injurious Conduct (CIC) is a crime that:
    1. Poses a substantial threat of personal injury or death

    -AND-

    2. Is punishable by fine or imprisonment

Who is Eligible (Continued)

- The Estate of or dependents of a deceased victim of criminally injurious conduct.

- Those injured trying to prevent criminally injurious conduct or apprehend a person suspected of engaging in criminally injurious conduct.
  - *Includes law enforcement officers injured in the line of duty*

Indirect Victim

- Requires analysis of three factors:

  First:

  - Was there a close relationship between the applicant and the direct crime victim

  Second:

  - Did the applicant sustain emotional harm such that it prevented him/her from performing day-to-day activities

Indirect Victim (Continued)

Third:

- Did the applicant have a direct awareness of the crime or arrive in its immediate aftermath
  - If the applicant is determined to be an indirect victim, he or she is considered a separate victim of the crime and should file a separate claim as a result

Who is Ineligible?

- Victims and claimants who do not report the crime to law enforcement
  - Or reporting to a "mandatory reporter" of child abuse
  - Or report to children Services

Who is Ineligible? (Continued)

- Applicants injured as a result of motor vehicle offenses
  - Except when:
    - Alcohol or drugs caused the crash, or
    - Injury was intentional, or
    - Injury caused by a fleeing felon or
    - Both reckless driving and serious physical harm, or
    - The offender failed to stop after an accident and the victim suffered serious physical harm

Who is Ineligible (Continued)

- Victims and claimants who engage in contributory misconduct within ten years of criminally injurious conduct or during the pendency of the claim
  - An offense of violence or drug trafficking that would constitute a felony under the law regardless of charge or conviction level
    - *Could lead to the complete denial or reduction of an award*

- Victims and claimants who fail to cooperate with a law enforcement officer or agency.
    - *Could lead to the complete denial or reduction of an award*

Who is Ineligible (Continued)

- Victims and claimants that have been convicted of a felony within 10 years of the criminally injurious conduct or during the pendency of the claim
  - ***In homicide cases, minor dependent(s) of the victim are still eligible for dependent's economic loss (loss of financial support) and counseling expenses***

Who is Ineligible? (Continued)

- Victims and claimants convicted of child endangering (CE) or domestic violence (DV) within 10 years of the criminally injurious conduct or during the pendency of the claim (includes misdemeanor and/or felony convictions)
  - ***In homicide cases where only the victim had a CE and/or DV conviction, the claimant <u>is</u> still eligible***

Who is Ineligible? (Continued)

- Victims and claimants who engage in violent felonious conduct or drug trafficking within 10 years of the criminally injurious conduct or during the pendency of the claim
  - This conduct would require a denial under the law regardless of charge or conviction level
    - ***In homicide cases, minor dependent(s) of the victim are still eligible for dependent's economic loss (loss of financial support) and counseling expenses (if residing with the victim)***

Who is Ineligible (Continued)

- A victim that is the offender or an accomplice of the offender who committed the criminally injurious conduct
  - Example: A victim who is a passenger seeking compensation for injuries caused by the driver when the victim knew or reasonably should have known that the driver was under the influence of alcohol, a drug of abuse, or both
    - Except, if the victim is a minor and the impaired driver is his or her parent, guardian, or care-provider
    - Except if the victim is under the age of 16

Who is Ineligible (Continued)

- An adult victim injured while serving a sentence of imprisonment in any detention facility after being convicted of or pleading guilty to an offense

- A victim who knowingly possesses a felony drug at the time of the criminally injurious conduct (includes drugs found in the victim's system)

Investigating a Claim

- The Attorney General shall fully investigate a claim for an award
  - Regardless of whether anyone is prosecuted for or convicted of committing the crime
  - The Attorney General, after completing the investigation shall make a written finding of fact and decision concerning an award

Investigating a Claim

- The Attorney General may require the claimant to provide further information or documentation of materials, including medical report, verifications of income prior to the crime, or income from certain settlements
- The Attorney General may also depose any witness, including the claimant

Expenses Eligible for Compensation

- Medical and related expenses
- Counseling expenses for victims or household family members
- Work loss/Lost wages
- Unemployment benefits lost as a result of the victim not being able to work
- Replacement cost for items of clothing removed from a victim in order to make a medical assessment
- Replacement for medical personal property i.e. canes, wheelchairs, hearing aids eyeglasses other mobility needs
- Crime scene cleanup expenses
  - repairs necessary for security (ex. doors and windows)

Eligible Expenses (Continued)

- Evidence replacement expenses
  - Costs to replace items taken by law enforcement as evidence.
- Replacement services loss
  - Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed if he or she had not been injured.
    - Includes household services, child care, etc.. Expenses lost for these services are most easily awarded if documented by cancelled checks or money orders

Eligible Expenses (Continued)

- Dependent's economic loss - Future loss of support (usually for spouse or minor children) from a deceased victim.
  - Only if the spouse and minor children were receiving financial support from the victim prior to the criminally injurious conduct. They must be the victim's financial dependents.

- Dependent's Replacement Services Loss.
  - Loss of child care or household services from a deceased victim that was performing those same services at the time of their death.
    - Minor Dependents: Only if the person providing the replacement child care is a non-custodial parent of the minor receiving the services.
    - Adults: Only if there is documentation that the expenses have been incurred for services formerly performed by the victim at the time of their death.

Eligible Expenses (Continued)

- Funeral and related burial expenses.
- Mileage or other transportation expenses for:
  - Medical/Counseling appointments
  - Family members of a deceased victim to attend criminal proceedings or the funeral
- Moving expenses incurred to separate the victim from the offender and/or that are necessary for the victim's care and rehabilitation (as verified by a mental health care provider, law enforcement, prosecutor, victim advocate, or by other sources)

Eligible Expenses (Continued)

- Attorney fees incurred to successfully obtain a restraining, custody or other order to physically separate the victim from the offender
- Fees not exceeding $1,000.00, at a rate not exceeding $100.00 per hour
- Reasonable travel time incurred to attend court hearings, not exceeding three hours round-trip for each court hearing, assessed at a rate not exceeding $30.00 per hour

Eligible Expenses (Continued)

- Attorney Fees and reasonable expenses to set up a guardianship, if that is necessary for a minor or other incompetent to receive an award
- Reasonable expenses and fees necessary to obtain a guardian's bond when the bond is required to pay an award to a fiduciary on behalf of a minor or other incompetent

Ineligible Expenses

- Stolen, damaged, or lost property.
  - Exception in crime scene clean up when property is related to safety issues i.e. doors/windows
  - Pain and suffering
- Any expense that is paid in full by collateral sources.
  - Benefits for economic loss that are readily available to the victim or claimant must be exhausted before an award can be recommended. The program is the payer of last resort

When Will a Decision be Made?

- By statute the Attorney General has 120 days to issue a finding of fact and decision
  - The majority of cases filed will fall into this category
  - Extensions of time may be taken if additional information is needed to fully investigate the claim

Can a Victim or Claimant Appeal?

- If victim or claimant disagrees with all or part of the Finding of Fact and Decision of the Attorney General, he or she may file a Request for Reconsideration.
  - *Undisputed expenses can be paid immediately*

- The Attorney General reconsiders the disputed issues and makes a Final Decision in 60 days (extensions may be taken if necessary)

Can a Victim or Claimant Appeal? (Continued)

- If a victim or claimant disagrees with all or part of the Final Decision, he or she can appeal to a Panel of Three Commissioners. The Panel will hold a hearing where the victim or claimant can testify and present evidence in support of their claim. The Panel will issue a decision based on the evidence presented at the hearing

- If a victim or claimant disagrees with the Panel's decision he or she may appeal to a Judge of the Court of Claims. The decision of the Judge is final

What About Future Expenses?

- Within five years of the last action taken on the claim by the Attorney General or the Court of Claims, a victim and/or claimant may file a Supplemental Compensation Application for consideration of additional economic loss incurred as a result of the criminally injurious conduct

Maximum Award Per Claim

- Up to $50,000.00 per claim
- Applicant can file if they are a victim in the future of a separate crime that meets the criminally injurious conduct standard

Maximum Award Per Category

- Funeral expenses: $7,500.00
  - Funeral, cremation, burial, flowers, and monument
  - Includes up to $500 for lost wages travel

    expenses for family members to attend funeral if the maximum award has not been reached for funeral or burial expenses

- Crime scene cleanup expenses: $750.00

- Replacement expenses for items taken for evidence collection: $750.00

Maximum Award Per Category.

- Mental health counseling (family): up to $2,500.00 per household family member ($7,500.00 per claim) in cases of:
  - Crimes resulting in severe and permanent incapacitating injury resulting in paraplegia or similar life-altering condition.
  - Homicide
  - Sexual assault
  - Domestic violence

Maximum Award Per Category

Lost wages and travel expenses for family members of a deceased victim to attend criminal proceedings:

$500.00 per family member;

$2,000.00 maximum per claim

Legal Costs Associated With Protection Orders.

The program will pay attorney fees directly related to obtaining a civil protection order, anti-stalking protection order or any order that successfully separates the victim from the offender.

Maximum hourly rate $100.00

Maximum per claim $1.000.00

How are Payments Issued?

- The program will directly pay outstanding amounts owed to providers of medical, funeral, and other services

- The program will directly pay victims and claimants the amounts they have already paid to the providers

Emergency Awards

- A victim or claimant may request an emergency award if:
  - He or she will suffer undue hardship if immediate economic relief is not granted
  - It is likely that all the eligibility requirements for a final award will be met
- After filing a claim, and if a victim or claimant is eligible, an emergency award of up to $2,000.00 can usually be paid within 2 weeks the decision

Remedial Care and Treatment Agreement

- Available when the victim or claimant cannot pay for the services and the provider will not perform the services without pre-payment
  - The victim or claimant and the provider enter into the agreement for services to be provided
  - The Attorney General determines if the expenses are compensable and if the agreement is valid. If so, the Attorney General will include the approved amount in the Finding of Fact and Decision
    - The provider is paid when certification that the services have been rendered is received

How do Victims/Claimants File?

- PDF application www.ohioattorneygeneral.gov
- Contact a Victim Advocate in their county
- Contact our office:

Ohio Attorney General's Office
150 E Gay Street 25th Floor
Columbus, OH 43162
800-582-2877

There is no fee to apply

Need More Information?

Ohio Attorney General's Office
Crime Victim Section
150 E. Gay St., 25th Floor
Columbus, OH 43215-4231
(800) 582-2877
(614) 466-5610

www.ohioattorneygeneral.gov

Request for Crime Victims Materials

- Crime Victims Applications
- Picking Up the Pieces (victims rights)
- Crime Can be Costly
- VINE

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Request for Training

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Questions?

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