

CRIME VICTIM COMPENSATION PROGRAM

A Guide to Assisting Victims of Violent Crime

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**Crime Victim Compensation Program
Crime Victim Assistance Division
Attorney General Tom Miller**

May 1997

TABLE OF CONTENTS

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TABLE OF CONTENTS

INTRODUCTION	i
ELIGIBILITY REQUIREMENTS	1
Claim Denials	2
COMPENSATION BENEFITS	3
BENEFIT REDUCTIONS	4
Restitution	4
Civil Settlements	4
Insurance	4
Public Funds	5
APPLICATION PROCESS	6
VERIFICATION PROCESS	6
Denial Process	6
Approval Process	7
Emergency Payment	7
Supplemental Benefits	8
APPEALS PROCESS	8
SEXUAL ASSAULT EXAMINATION PROGRAM	10
COMMON QUESTIONS AND ANSWERS	11
APPENDIX	14
IOWA CODE CHAPTER 912	14
Administrative Rules	23

Old Historical Building
Des Moines, IA 50319

(515) 281-5044

Toll-free outside of Des Moines

1-800-373-3044

INTRODUCTION

The Compensation Program is administered by the Crime Victim Assistance Division of the Attorney General's office. The Division also administers the Sexual Assault Examination Program and the Victim Grants Program.

While no amount of compensation can erase the physical and emotional trauma of crime, the Compensation Program strives to alleviate the financial burdens suffered by crime victims.

A variety of crime related expenses are compensable under state law including:

- * Medical
- * Lost wages
- * Counseling for victims, homicide survivors and other persons related to or living with a victim at the time of the crime
- * Loss of support for dependents of disabled or deceased victims
- * Clothing and bedding replacement
- * Clean-up of a residential homicide site
- * Funeral and burial expenses
- * Medical expenses for survivors of a homicide victim

No tax dollars are used to fund the Compensation Program. All funding comes from criminal fines and penalties, offender restitution, monies recovered through civil suits involving the offender or other liable third parties, and the federal Victims of Crime Act (VOCA), which is also funded entirely by federal fines and penalties.

You may contact the Compensation Program at the following address if you would like additional information or need program brochures or applications:

Crime Victim Compensation Program
Old Historical Building
Des Moines, IA 50319

(515) 281-5044

Toll-free outside of Des Moines

1-800-373-5044

CRIME VICTIM COMPENSATION

ELIGIBILITY REQUIREMENTS

To receive compensation for crime related injuries or death an applicant must meet the following criteria as defined in Iowa Code Chapter 912:

1. **The applicant must be a victim or survivor of a victim who has suffered personal injury or death as the result of:**
 - a. A covered crime;
 - b. The good faith effort of a person attempting to prevent a crime; or
 - c. The good faith effort of a person to apprehend a person suspected of committing a crime. §912.1(5)

Covered crimes include the following:

- Assault
- Domestic abuse
- Sexual assault
- Child physical and sexual abuse
- Homicide
- Drunk driving
- Hit and run
- Reckless driving
- Vehicular homicide
- Drunk boating
- Victims of terrorism which occurred outside of the United States
- Victims of other violent crimes, such as robbery, burglary, or arson if an injury or threat of injury occurred. §912.1(2)

2. **The victim must report the crime to law enforcement or the Department of Human Services within 72 hours of it's occurrence or within 72 hours of when it could reasonably be reported. §912.4(2)**

The reporting requirement is defined as providing a true and accurate report of the incident, including:

- a. the nature of the crime;
- b. the location of crime;
- c. the name, description and whereabouts of suspect, if known; and
- d. the names of witnesses.

The requirement is not met if the victim only provides his/her name and the fact that he or she was victimized.

CRIME VICTIM COMPENSATION

- 3. The victim must cooperate with the reasonable requests of law enforcement in the investigation or prosecution of the crime. §912.4(6)**

Reasonable cooperation includes, but is not limited to the following:

- a. Providing law enforcement with a true and accurate report of the crime;
- b. Participating in the investigation of the crime to assist in identification of the suspect as requested;
- c. Participating in deposition and trial testimony as requested.

Reasonable cooperation is determined on a case by case basis taking into consideration the victim's age, physical condition and psychological state, and any compelling health or safety reasons that would jeopardize his or her well being.

- 4. An application for compensation must be filed within 2 years of the date of the crime, the discovery of the crime or the date of the death of the victim. §912.4(1)**
- 5. The crime for which compensation is sought must have occurred in Iowa. §912.5(4)**

The Compensation Program will provide benefits to Iowa residents who were injured in states which do NOT have an eligible compensation program. Currently, all 50 states have compensation programs, however, Nevada will not provide benefits to non-residents. Iowans injured by an act of terrorism in a foreign country may also apply for compensation.

CLAIM DENIALS

Claims will be denied if the application does not meet the above eligibility criteria.

Additionally, pursuant to Iowa Code §912.7 the claim will be denied if the injury or death was caused by either of the following:

- a. Consent, provocation or incitement by the victim; or
- b. The victim was assisting, attempting or committing a criminal act.

CRIME VICTIM COMPENSATION

COMPENSATION BENEFITS

Effective July 1, 1996

The Compensation Program can provide benefits to eligible victims for the following crime related costs:

- ▼ **Medical care, including psychiatric, dental or nursing care (up to \$10,500)**
- ▼ **Crime related mental health counseling provided to a victim by a licensed psychologist or a person holding at least a master's degree in social work or counseling and guidance or a victim counselor as defined in Iowa Code §236A.1 (up to \$3,000)**
- ▼ **Crime related counseling provided to persons related to or living with a victim at the time of the crime (up to \$1,000 per secondary victim/\$6,000 total)**
- ▼ **Wages lost by the victim due to crime related injuries (up to \$6,000)**
- ▼ **Loss of support for dependents of deceased victims or victims who are unable to work for sixty days or longer (up to \$2,000 per dependent/\$6,000 total)**
- ▼ **Funeral and burial costs for homicide victims (up to \$5,000)**
- ▼ **Grief counseling for survivors of a homicide victim (up to \$3,000 per survivor/\$6,000 total)**
- ▼ **Medical expenses for crime-related care for survivors of a homicide victim (up to \$3,000 per survivor)**
- ▼ **Cleaning the homicide location in a residence (up to \$1,000)**
- ▼ **Replacement of clothing held as evidence (up to \$100)**

CRIME VICTIM COMPENSATION

BENEFIT REDUCTIONS

The Compensation Program is the payor of last resort. Compensation benefits are intended to supplement and not replace other programs or benefits that the victim may be eligible to receive.

Compensation payments **must** be reduced by the following: (Iowa Code §912.7)

- a. Payment received from or on behalf of the person who committed the crime (restitution, dramshop or other liable third parties);
- b. Payment received from an insurance program (health or auto insurance, workers' compensation, or unemployment benefits); and
- c. Payment from other public funds (Medicaid, Medicare, State Papers, General Relief, etc.)

Restitution

Compensation benefits will be reduced by the amount of restitution received by the victim at the time a claim is processed for payment.

If restitution is ordered to the victim, but has not received by the victim, the Compensation Program will seek to have the court order amended to direct restitution to the program.

Civil Settlements

Compensation will be reduced by any civil settlement received by the victim at the time the claim is processed for payment.

If a civil suit is pending at the time the claim is processed for payment the civil attorney and victim are advised that the program has a subrogation interest in the pending civil settlement.

Insurance

Crime related bills must be submitted to the victim's insurance carrier for payment determination.

CRIME VICTIM COMPENSATION

If a victim has insurance, compensation will be paid for the victim's out-of-pocket expenses, including any required deductible or co-payment.

Public Funds

Victims may be asked to apply for other public benefit programs such as Medicaid, State Papers or General Relief if it appears that they would meet the income qualifications.

The Compensation Program will pay for the victim's out-of-pocket expenses of up to \$5000 for a victim for their lost wages or any crime related expenses that are not covered by insurance. On the day an application is received (in writing or by telephone) the victim will be assigned a claim number and a secretary will assign a claim number to the application and assign it to an investigator.

An emergency payment may be made if the victim is in need of immediate assistance. The victim will be advised of the total amount of the emergency payment. The emergency payment is subject to the same verification process as the other payments. The division secretary enters the application into the system and the necessary correspondence and verification forms.

The program must still determine that the victim meets the eligibility criteria prior to a final payment. The investigator and secretary will review the application and work together to obtain verification of crime related expenses.

NOTE: If a particular victim needs immediate assistance or prior approval for a particular expense, the investigator and secretary will review the application and work together to obtain verification of crime related expenses. The investigator and secretary will review the application and work together to obtain verification of crime related expenses. The investigator and secretary will review the application and work together to obtain verification of crime related expenses.

Supplemental Benefits
Denial Process

If the investigator determines that the victim does not meet the eligibility criteria, the investigator prepares a denial letter and gives the file to the Deputy Director for final review and denial.

The applicant is sent a formal notice of the denial and provided with the reasons for the denial. The applicant is given the opportunity to appeal the denial decision. The applicant is also given the opportunity to appeal the denial decision. The applicant is also given the opportunity to appeal the denial decision.

CRIME VICTIM COMPENSATION

APPLICATION PROCESS

To receive compensation benefits the victim or the survivor of a homicide victim must file an **Application for Crime Victim Compensation**.

Applications may be filed in writing on the prescribed form **OR completed by telephone by contacting the program at (515) 281-5044 or toll-free outside of Des Moines at 1-800-373-5044.**

All applicants must complete an Authorization to Release Information and Repayment/Subrogation Agreement before benefits can be issued.

VERIFICATION PROCESS

On the day an application is received (in writing or by telephone) the division secretary assigns a claim number to the application and assigns it to an investigator.

The division secretary enters the application into the database and prints the necessary correspondence and verification forms.

The investigators and secretary work together by telephone contact and a computerized mail system to obtain verification of crime related expenses.

When all requested verification has been received the investigator can process the application. The investigator first reviews the law enforcement verification form and investigative report to determine if the claim meets the statutory eligibility criteria.

Denial Process

If the investigator determines that the claim does not meet the eligibility criteria the investigator prepares a memo citing the statutory basis for denial and gives the file to the Deputy Director for final review and denial.

The applicant is sent a formal notice of the denial and provided with a form to complete if he or she wishes to appeal the denial decision. Notice of the denial decision is also sent to the county attorney, civil attorney and all medical providers.

CRIME VICTIM COMPENSATION

Approval Process

If the claim does meet the eligibility requirements the investigator reviews the verification information, including all billing statements, medical or treatment records, insurance documentation, and employment information to determine the amount of compensation a victim is eligible to receive.

The investigator enters the payments into the database. The Quality Control Coordinator reviews the claim for final approval and issuance of the payments.

Emergency Payment

The Compensation Program may issue an emergency payment of up to \$500 to a victim for their lost wages or any crime related expenses that the victim has already paid.

An emergency payment is an **advance** of the total amount of compensation the victim will be entitled to receive. The emergency payment is subtracted off the final compensation payment.

The program must still determine that the claim meets the eligibility criteria prior to issuing an emergency payment.

NOTE: If a particular victim needs immediate assistance or prior approval for medical treatment, the victim/witness coordinator or advocate should contact the Deputy Director to discuss options to expedite the payment.

Supplemental Benefits

There is no time limit for the submission of supplemental bills. On-going crime related expenses will be verified in the same manner as the original expenses and paid as they are received.

Supplemental benefits are provided at the benefit level which was in effect at the time the original application was filed. For example, effective 7-1-93 the maximum benefit for funeral and burial was \$2,500. As of 7-1-94 it was increased to \$5,000. The benefit increase applies only to applications received after the effective date.

CRIME VICTIM COMPENSATION

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CRIME VICTIM COMPENSATION

APPEALS PROCESS

If the applicant disagrees with the program decision or the amount of compensation, the program's administrative rules allow for three levels of appeal. At the first level, a dissatisfied applicant may request that the Division Director reconsider the program decision by completing the Request for Reconsideration form (the form is provided to the applicant with the denial letter). Applicants may also submit additional information with the request.

The request for reconsideration form must be returned to the program office within 30 days from the date of the program decision.

The Division Director will respond in writing to the Request for Reconsideration within 30 days of receipt of the request.

If the Division Director overturns the program denial the claim is returned to the investigator to complete the necessary verification and/or issuance of benefits.

If the Division Director upholds the program denial the applicant is provided with a Request for Board Consideration form.

The Request for Board Consideration must be returned to the program office within 30 days from the date of the Division Director's decision.

The Board will hold a hearing to consider the claim. The applicant will be notified in advance of the date and time the Board will consider their appeal.

The applicant may provide additional information or appear before the Board in person, accompanied by an attorney or advocate if desired, or attend by telephone conference call.

After reviewing the claim file and accompanying information the Board may uphold or overturn the Director's decision or direct the Deputy Director to resume the investigation to obtain additional information.

The Board will issue a Notice of Board Decision and provide a copy to the applicant.

If the Board overturns the Director's denial, the claim is returned to the

CRIME VICTIM COMPENSATION

investigator to complete the necessary verification and/or the issuance of benefits.

If the Board upholds the Director's denial the applicant is notified of their right to file a Petition for Judicial Review under Iowa Code Chapter 17A. The Petition for Judicial Review must be filed within 30 days of the Board's decision.

1. The victim does not need to file an application to report the crime to a law enforcement agency or pay the actual expenses of the crime.

Q: CAN A VICTIM FILE FOR COMPENSATION IF THE CRIME WAS NOT REPORTED TO LAW ENFORCEMENT?
A: YES, THE VICTIM MAY FILE FOR COMPENSATION IF THE CRIME WAS NOT REPORTED TO LAW ENFORCEMENT.

2. The hospital and treating physician automatically bill the SAE Program for reimbursement. The victim may not be aware that the bill has been forwarded for payment. The Compensation Program will pay the bill if the hospital and treating physician have not billed the SAE Program.

3. The victim should never be billed for the cost of a medical service. The hospital and treating physician must accept the SAE Program as payment in full for the cost of the service.

Q: DOES THE COMPENSATION PROGRAM COVER MEDICALLY NECESSARY ITEMS?
A: YES, THE COMPENSATION PROGRAM WILL COVER MEDICALLY NECESSARY ITEMS.

The state pays for certain medical services to ensure that evidence is available to your attorney in a timely manner. The state also pays for certain medically necessary items, such as hospitalization, medical services, and counseling.

Q: WHAT IF THE VICTIM NEEDS ADDITIONAL COUNSELING?
A: THE COMPENSATION PROGRAM WILL COVER THE COST OF ADDITIONAL COUNSELING.

OR COUNSELING AFTER COMPENSATION HAS BEEN APPROVED?
A: YES, THE COMPENSATION PROGRAM WILL COVER THE COST OF ADDITIONAL COUNSELING.

The victim may submit additional crime related bills to the program until the maximum benefit has been paid. A victim who needs treatment after the claim has been approved should contact the program to find out how to submit the additional bills.

CRIME VICTIM COMPENSATION

SEXUAL ASSAULT EXAMINATION PROGRAM

The Crime Victim Assistance Division also administers the Sexual Assault Examination Program (SAE). Iowa Code Chapter 709 requires the SAE Program to pay for the sexual assault examination, including laboratory tests and prescription medications for the prevention of sexually transmitted diseases. The SAE Program can only pay for the cost of collecting sexual assault evidence. If the victim requires other medical treatment as a result of the crime, he or she should file an application for compensation.

There are several differences between the SAE Program and the Compensation Program including:

1. The victim does not need to file an application or report the crime to a law enforcement agency to have the sexual assault examination paid for.
2. The hospital and treating physician automatically bill the SAE Program for reimbursement. The victim may not be aware that the bill has been submitted for payment.
3. The victim should never be billed for the cost of a sexual assault examination. The hospital and treating physician must accept the SAE payment as payment in full for the cost of the examination.

The state pays for sexual assault examinations to ensure that evidence is gathered in a timely manner. The exam also is an important way to address the health and safety concerns of victims of sexual assault.

Having a sexual assault exam does **not** mean that the victim must proceed with a criminal case against a defendant, but the exam preserves the evidence in the event that charges are later filed.

After reviewing the claim file and accompanying information the Board may uphold or overturn the Director's decision or direct the Deputy Director to resume the investigation to obtain additional information.

The Board will issue a Notice of Board Decision and provide a copy to the applicant.

If the Board overturns the Director's denial, the claim is returned to the

CRIME VICTIM COMPENSATION

COMMON QUESTIONS AND ANSWERS

Q: CAN THE VICTIM RECEIVE COMPENSATION IF THE OFFENDER HAS BEEN ORDERED TO PAY RESTITUTION?

Yes, the victim can apply for compensation if restitution has been ordered. Once an application is approved the program will ask the county attorney to amend the restitution order to include repayment to the program. If the victim has additional expenses not covered by the Compensation Program, such as property damage, the victim would continue to receive restitution until fully reimbursed. Any restitution payments received by the victim for the same expenses submitted to the Compensation Program will be deducted from the total compensation payment.

Q: CAN A VICTIM WHO RECEIVES COMPENSATION SUE THE OFFENDER FOR THE INJURIES SUSTAINED IN THE CRIME?

Yes, the victim may still sue the offender or other liable third party for the damages caused by the crime. The Compensation Program is entitled to repayment if the civil settlement includes payment for the expenses paid by the Compensation Program.

Q: DOES THE COMPENSATION PROGRAM PAY FOR STOLEN OR DAMAGED PROPERTY?

No, the Compensation Program can not pay for property loss, except for medically necessary items, such as eyeglasses, hearing aids, or prosthetic devices.

Q: WHAT IF THE VICTIM NEEDS ADDITIONAL MEDICAL CARE OR COUNSELING AFTER COMPENSATION HAS BEEN APPROVED?

The victim may submit additional crime related bills to the program until the maximum benefit has been paid. A victim who needs treatment after the claim been approved should contact the program to find out how to submit the additional bills.

CRIME VICTIM COMPENSATION

Q: CAN THE COMPENSATION PROGRAM PAY FOR PAIN AND SUFFERING?

No, the Compensation Program can not pay for pain and suffering. A victim wanting payment for pain and suffering should contact a private attorney to initiate a civil action.

Q: SHOULD THE VICTIM WAIT TO FILE AN APPLICATION FOR COMPENSATION UNTIL THE OFFENDER HAS BEEN ARRESTED OR CONVICTED OF THE CRIME?

No, the victim should apply for compensation as soon as possible after the crime. Compensation is not based upon the arrest or conviction of the offender.

Q: CAN A DOMESTIC VIOLENCE VICTIM RECEIVE COMPENSATION IF HE/SHE STILL LIVES WITH THE OFFENDER?

Yes, domestic violence victims who live with the offender are still eligible to receive compensation, if the other eligibility requirements are met, such as filing a report with law enforcement within 72 hours of the crime.

Q: CAN A VICTIM RECEIVE LOSS OF SUPPORT BENEFITS FOR CHILDREN THAT DO NOT LIVE WITH THEM?

Yes, loss of support can be awarded for dependents who do not live with the victim if the victim is contributing to the care or support of the dependent. The Compensation Program would ask for verification of the support, such as child support receipts, income tax verification of the dependency or child care expenses.

Q: HOW LONG WILL IT TAKE TO RECEIVE COMPENSATION?

It takes approximately six weeks for a victim to receive compensation once an application has been received. Some applications may take longer if the program is waiting for on-going law enforcement information, or insurance determinations. If the victim is in need of compensation sooner than six weeks an emergency award should be requested.

CRIME VICTIM COMPENSATION

Q: WHAT IS AN EMERGENCY AWARD?

An emergency award is partial payment or an advance of the total compensation payment. Emergency awards are generally processed quicker than the total award, however, the program must still review the law enforcement verification and documentation of the victim's losses. The maximum emergency award is \$500.

Q: CAN A VICTIM WHO WAS INTOXICATED AT THE TIME OF THE CRIME RECEIVE COMPENSATION?

Intoxicated victims are not automatically disqualified from receiving compensation. The program will, however, determine if there was a causal connection between the intoxication and the resulting victimization.

Q: WHAT IS CONSENT, PROVOCATION AND INCITEMENT?

Consent, provocation and incitement is conduct on the part of the victim which may have caused their injuries or death. When reviewing information regarding consent, provocation and incitement the program considers whether charges are filed against the victim or the suspect, comparable or reasonable force, age of the victim, the extent of the injuries suffered, and issues of mutual combat.

Q: CAN A VICTIM WHO DOES NOT WISH TO PRESS CRIMINAL CHARGES STILL RECEIVE COMPENSATION?

Yes, a victim who chooses not to press criminal charges is still eligible to receive compensation if it is deemed that the crime was timely reported to law enforcement and the victim cooperated with the reasonable requests of law enforcement and the county attorney.

CRIME VICTIM COMPENSATION

APPENDIX

IOWA CODE CHAPTER 912 CRIME VICTIM COMPENSATION

Effective July 1, 1996

Compensation is available only to victims of criminal acts committed on or after January 1, 1983; 83 Acts, ch 1258, §25

- 912.1 Definitions.
- 912.2 Award of compensation.
- 912.2A Crime Victim Assistance Board
- 912.3 Duties of department.
- 912.4 Application for compensation.
- 912.5 Compensation payable.
- 912.6 Computation of compensation.
- 912.7 Reductions and disqualifications.
- 912.8 Compensation when money insufficient.
- 912.9 Erroneous or fraudulent payment - penalty.
- 912.10 Release of information.
- 912.11 Emergency payment compensation.
- 912.12 Right of action against perpetrator - subrogation.
- 912.13 Rulemaking.

912.1 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Compensation" means moneys awarded by the department as authorized by this chapter.
2. "Crime" means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony, or misdemeanor, or would be so punishable but for the fact the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. "Crime" does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of

CRIME VICTIM COMPENSATION

§321.261, 321.277, 321J.2, 462A.14 or 707.6A, or when the intention is to cause personal injury or death. A license revocation under §321J.9 or 321J.12 shall be considered by the department as evidence of a violation of §321J.2 for the purposes of this chapter.

3. "Department" means the department of justice.
4. "Dependent" means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim's death.
- 4A. "Secondary Victim" means the victim's spouse, children, parents, and siblings, and any person who resides in the victim's household at the time of the crime or at the time of the discovery of the crime.
5. "Victim" means a person who suffers personal injury or death as a result of any of the following:
 - a. A crime.
 - b. The good faith effort of a person attempting to prevent a crime.
 - c. The good faith effort of a person to apprehend a person suspected of committing a crime.

912.2 Award of compensation. The department shall award compensation authorized by this chapter if the department is satisfied that the requirements for compensation have been met.

912.2A Crime Victim Assistance Board.

1. A crime victim assistance board is established, and shall consist of the following members to be appointed pursuant to rules adopted by the department:
 - a. A county attorney or assistant county attorney.
 - b. Two persons engaged full time in law enforcement.
 - c. A public defender or an attorney practicing primarily in criminal defense.
 - d. A hospital medical staff person involved with emergency services.
 - e. Two public members who have received victim services.
 - f. A victim service provider.
 - g. A person licensed pursuant to chapter 154B or 154C.
 - h. A person representing the elderly.

CRIME VICTIM COMPENSATION

2. The board shall adopt rules pursuant to chapter 17A relating to program policies and procedures.
3. A victim aggrieved by the denial or disposition of the victim's claim may appeal to the district court within thirty days of receipt of the board's decision.

912.3 Duties of the department. The department shall:

1. Adopt rules pursuant to chapter 17A relating to the administration of the crime victim compensation program, including the filing of claims pursuant to the program, and the hearing and disposition of the claims.
2. Hear claims, determine the results relating to claims, and reinvestigate and reopen cases as necessary.
3. Publicize through the department, county sheriff departments, municipal police departments, county attorney offices, and other public or private agencies, the existence of the crime victim compensation program, including the procedures for obtaining compensation under the program.
4. Request from the department of human services, the divisions of job service and industrial services of the department of employment services, the department of public safety, the county sheriff departments, the municipal police departments, the county attorneys, or other public authorities or agencies reasonable assistance or data necessary to administer the crime victim compensation program.
5. Require medical examinations of victims as needed. The victim shall be responsible for the costs of the medical examination if compensation is made. The department shall be responsible for the cost of the medical examination from funds appropriated to the department for the crime victim compensation program if compensation is not made to the victim unless the cost of the examination is payable as a benefit under an insurance policy or subscriber contract covering the victim or the cost is payable by a health maintenance organization.
6. Receive moneys collected pursuant §246.702 for the purpose of compliance with Pub. L. 98-473.

CRIME VICTIM COMPENSATION

912.4 Application for compensation.

1. To claim compensation under the crime victim compensation program, a person shall apply in writing on a form prescribed by the department and file the application with the department within two years after the date of the crime, or of the discovery of the crime, or date of death of the victim.
2. A person is not eligible for compensation unless the crime was reported to the local police department or county sheriff department within seventy-two hours of its occurrence. If the crime cannot reasonably be reported within that time period, the crime shall have been reported within seventy-two hours of the time a report can reasonably be made. The department may waive this requirement if good cause is shown.
3. Notwithstanding subsection 2, a victim under the age of eighteen or dependent adult as defined in section 235B.1 who has been sexually abused or subjected to any other unlawful sexual conduct under chapter 709 or 726 or who has been the subject of a forcible felony is not required to report the crime to the local police department or county sheriff department to be eligible for compensation if the crime was allegedly committed upon a child by a person responsible for the care of a child, as defined in §232.68, subsection 7, or upon a dependent adult by a caretaker as defined in §235B.1, and was reported to an employee of the department of human services and the employee verifies the report to the department.
4. When immediate or short-term medical services or mental health services are provided to a victim under §910A.16, the department of human services shall file the claim for compensation as provided in subsection 3 for the victim.
5. When immediate or short-term medical services to a victim are provided pursuant to §910A.16, by a professional licensed or certified by the state to provide such services, the professional shall file the claim for compensation, unless the department of human services is required to file the claim under this section. The requirement to report the crime to the local police department or county sheriff department under subsection 2 does not apply to this subsection.

CRIME VICTIM COMPENSATION

6. The victim shall cooperate with reasonable requests by the appropriate law enforcement agencies in the investigation or prosecution of the crime.

912.5 Compensation payable. The department may order the payment of compensation:

1. To or for the benefit of the person filing the claim.
2. To a person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of personal injury to the victim.
3. To or for the benefit of one or more dependents of the victim, in the case of death of the victim. If two or more dependents are entitled to compensation, the compensation may be apportioned by the department as the department determines to be fair and equitable among the dependents.
4. To a victim of an act committed outside this state of Iowa who is a resident of the state of Iowa and would be compensable had it occurred within this state of Iowa and the act occurred in a state that does not have an eligible crime victim compensation program as such term is defined in the Federal Victims of Crime Act of 1984, Pub. L. 98-473, section 1403(b), as amended and codified in 42 U.S.C. §10602(b).
5. To or for the benefit of a resident of this state who is the victim of an act of terrorism as defined in 18 U.S.C. 2331, which occurred outside of the United States.

912.6 Computation of compensation. The department shall award compensation as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed ten thousand five hundred dollars. Reasonable charges incurred for mental health care not to exceed three thousand dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a masters degree in social work or counseling and guidance, or a victim counselor as defined in section 236A.1.

CRIME VICTIM COMPENSATION

2. Loss of income from work the victim would have performed and for which the victim would have received remuneration if the victim had not been injured, not to exceed six thousand dollars. [Eff. July 1, 1995]
3. Reasonable replacement value of clothing that is held for evidentiary purposes, not to exceed one hundred dollars.
4. Reasonable funeral and burial expenses, not to exceed five thousand dollars.
5. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed two thousand dollars per dependent or a total of six thousand dollars.
6. In the event of a victim's death, reasonable charges incurred for counseling the victim's spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in §236A.1, subsection 1, or an individual holding at least a master's degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed three thousand dollars per person or a total of six thousand dollars per victim death.
- 6A. In the event of a victim's death, reasonable charges for health care for the victim's spouse, children, parents, siblings or persons related by blood or affinity to the victim not to exceed three thousand dollars per survivor. [Effective July 1, 1996. HF2472]
7. Reasonable expenses incurred for cleaning the scene of a homicide, if the scene is a residence, not to exceed one thousand dollars.
8. Reasonable charges incurred for mental health care for secondary victims which includes the services provided by a psychologist licensed under chapter 154B, a person holding at least a masters in social work, counseling, or a related field, a victim counselor as defined in section 236A.1, or a psychiatrist licensed under chapter 147, 148, or 150A. The allowable charges under this subsection shall not exceed one thousand

CRIME VICTIM COMPENSATION

dollars per secondary victim or a total of six thousand dollars.

912.7 Reductions and disqualifications. Compensation is subject to reduction and disqualification as follows:

1. Compensation shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:
 - a. From or on behalf of, a person who committed the crime or who otherwise is liable for damages resulting from the crime.
 - b. From an insurance payment or program, including but not limited to workers' compensation or unemployment compensation.
 - c. From public funds.
 - d. As an emergency award under section 912.11.
2. Compensation shall not be made when the bodily injury or death for which a benefit is sought was caused by any of the following:
 - a. Consent, provocation, or incitement by the victim.
 - b. The victim assisting, attempting, or committing a criminal act.

912.8 Compensation when money insufficient. Notwithstanding this chapter a victim otherwise qualified for compensation under the crime victim compensation program, is not entitled to the compensation when there is insufficient money from the appropriation for the program to pay the compensation.

912.9 Erroneous or fraudulent payment - penalty.

1. If a payment or overpayment of compensation is made because of clerical error, mistaken identity, innocent misrepresentation by or on behalf of the recipient, or other circumstances of a similar nature, not induced by fraud by or on behalf of the recipient, the recipient is liable for repayment of the compensation. The department may waive, decrease, or adjust the amount of the repayment of the compensation. However, if the department does not notify the recipient of the erroneous payment or overpayment within one year of the date the compensation was made, the recipient is not liable for the repayment of the compensation.
2. If a payment or overpayment has been induced by fraud by or on behalf of a recipient, the recipient is liable for repayment of the compensation.

CRIME VICTIM COMPENSATION

912.10 Release of information. A person in possession or control of investigative or other information pertaining to an alleged crime or a victim filing for a compensation shall allow the inspection and reproduction of the information by the department upon the request of the department, to be used only in the administration and enforcement of the crime victim compensation program. Information and records which are confidential under §22.7 and information or records received from the confidential information or records remain confidential under this section. A person does not incur legal liability by reason of releasing information to the department as required under this section.

912.11 Emergency payment compensation. If the department determines that compensation may be made and that undue hardship may result to the person if partial immediate payment is not made, the department may order emergency compensation to be made paid to the person, not to exceed five hundred dollars.

912.12 Right to action against perpetrator - subrogation.

A right of legal action by the victim against a person who has committed a crime is not lost as a consequence of a person receiving compensation under the crime victim compensation program. If a person receiving compensation under the program seeks indemnification which would reduce the compensation under §912.7, subsection 1, the department is subrogated to the recovery to the extent of payments by the department to or on behalf of the person. The department has a right of legal action against a person who has committed a crime resulting in payment of compensation by the department to the extent of the compensation payment. However, legal action by the department does not affect the right of a person to seek further relief in other legal actions.

912.13 Rulemaking. The department shall adopt rules pursuant to chapter 17A to implement the procedures for compensation payments with respect to §910A.16 and §912.4, subsections 3, 4, 1 and 5.

912.14 Victim Compensation Fund A victim compensation fund is established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the department and dedicated to and used for the purposes of §709.10 and this chapter. In addition, the department may use moneys from the fund for the purposes of section 236.15 and for the award of funds to programs that provide services and support to victims of domestic

CRIME VICTIM COMPENSATION

DEPARTMENT OF JUSTICE Administrative Rules Iowa Administrative Code Chapter 61

CHAPTER 9, DIVISION II CRIME VICTIM COMPENSATION Effective May 31, 1995

61-9.25(912) Administration of the crime victim compensation program.

The crime victim assistance division of the department of justice shall administer the crime victim compensation program as provided in Iowa Code chapter 912. All questions, comments, requests for information, or applications for compensation shall be directed to the crime victim assistance division. Requests should be addressed to: Crime Victim Assistance Division, Old Historical Building, Des Moines, Iowa 50319, telephone (515)281-5044 or 1-800-373-5044.

61-9.26(912) Definitions. For rules of the department of justice crime victim assistance division, crime victim compensation program, the following definitions apply:

"Applicant" includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime as defined in Iowa Code section 912.1(5).
2. A person responsible for the maintenance of a victim.
3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and the act occurred in a foreign country that does not have a victim compensation program as defined in the federal law.
4. In the event of a victim's death, the spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim. An estate is not an eligible applicant for crime victim compensation. An estate shall, however, be reimbursed for funeral and burial expenses if the estate paid the costs on behalf of an eligible applicant pursuant to Iowa Code section 912.6(7) who shall benefit from the proceeds of the estate.
5. A legal representative authorized to act on behalf of any of the persons listed above.

"Board" means the crime victim assistance board of the department of justice.

CRIME VICTIM COMPENSATION

"Compensation" means moneys awarded by the division as authorized in Iowa Code chapter 912.

"Counseling" means problem solving and support concerning emotional issues that result from a compensable crime. Counseling is a confidential service provided in person on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person's sense of well-being and social functioning. Counseling does not include victim advocacy services such as crisis telephone counseling, attendance at medical procedures, law enforcement interviews or criminal justice proceedings.

"Director" means director of the crime victim assistance division established in the department of justice.

"Division" means the crime victim assistance division of the department of justice.

"Income or wages" means net income or net wages.

"Medical care" is defined as services provided by a person licensed by the state under Iowa Code chapter 147, 148E, 152B, or 152C, or services provided under the supervision or order of a licensed physician or surgeon, dentist, or chiropractor. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

"Pecuniary loss" means the amount of medical or medical-related expenses and shall include, but not be limited to, eyeglasses, hearing aids, dentures, prosthetic devices including those which were taken, lost, or destroyed during the crime, home health care, medications, counseling, pregnancy-related services, equipment rental or purchase, property alteration, transportation for emergencies and medical care provided outside the victim's county of residence, or payment of health insurance premiums covered by an employer previous to the victim's disability from crime. Pecuniary loss shall also include the loss of income that the victim has incurred as a direct result of the injury to the extent the victim has not been and shall not be indemnified from any other source.

"Personal injury" or "injury" shall mean bodily harm or mental suffering and shall include a victim's pregnancy or miscarriage resulting from a crime.

CRIME VICTIM COMPENSATION

"Program" means the crime victim compensation program of the department of justice.

"Reasonable charges" means charges ordinarily charged by the provider of the service to the general public for services of a similar nature.

61-9.27(912) Duties of the division. The duties of the division shall include, but not be limited to, the duties provided for in Iowa Code sections 13.31 and 912.3, as well as to:

1. Prepare appropriate forms for the filing of compensation applications.
2. Conduct an administrative review of claims where a request for reconsideration is filed by an applicant with the director.
3. Receive moneys bequeathed, awarded, or donated to the crime victim assistance division by a public or private organization or individual.

61-9.28(912) Application for compensation. An applicant may file an application for compensation by telephone or in writing within two years of the occurrence or discovery of a crime.

9.28(1) Postmarked application.

An application postmarked within the prescribed time period shall be considered timely filed.

9.28(2) Multiple erroneous claims. Where two or more applications are filed by or on behalf of an individual applicant during a calendar month and the applications appear on initial review to be erroneous claims based on innocent misrepresentation or circumstances of a similar nature, the claims shall be treated as a single application. Verification shall be investigated for each crime recorded in a multiple erroneous application file. If any of the crimes recorded in a combined application are verified as compensable crimes, the applications for compensation for those crimes shall be separated from the combined file and assigned distinct application numbers.

The department will notify the applicant whenever two or more applications have been combined as one application.

9.28(3) Cooperation with law enforcement. Reasonable cooperation by the victim may include, but is not limited to, the following:

CRIME VICTIM COMPENSATION

- a. Providing law enforcement with a true and accurate report of the crime.
- b. Participating in the investigation of the crime to assist law enforcement in the identification of a suspect as requested.
- c. Participating in prosecution procedures including deposition and trial testimony as requested.

In determining whether a victim reasonably cooperated with law enforcement, the division may consider the victim's age, physical condition and psychological state, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.28(4) Sexual abuse victim. A victim of sexual abuse shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual abuse evidentiary examination.

9.28(5) Domestic abuse victim. A victim of domestic abuse shall be deemed to have reasonably cooperated with law enforcement if a report of the crime was made to law enforcement.

9.28(6) Law enforcement reports. For the purpose of the program, a report of a crime made to any of the following shall be considered a report to the local police department or county sheriff's office as provided in Iowa Code section 912.4(2):

- a. Sheriffs and their regular deputies.
- b. Marshals and police officers of cities.
- c. Peace officers of the department of public safety.
- d. Special security officers employed by board of regents institution as identified in Iowa Code section 262.13.
- e. Peace officers as authorized by Iowa Code section 350.5 or 456A.13.
- f. Employees of the department of transportation who are designated "peace officers" by resolution of the department under Iowa Code section 321.477.
- g. Correctional officers, including parole and probation officers.
- h. County attorneys.
- i. An employee of the department of human services having jurisdiction to investigate the incident.

9.28(7) Report to law enforcement. A victim is considered to have made a

CRIME VICTIM COMPENSATION

report to law enforcement in accordance with Iowa Code section 912.4(2) when the victim has provided a true and accurate report of the incident, which shall include to the best of the victim's knowledge:

- a. The nature of the crime,
- b. The location of the crime,
- c. The name, whereabouts and description of the suspect, if known, and
- d. The names of witnesses.

9.28(8) Law enforcement record. A law enforcement trip record shall satisfy the requirement that the crime be reported to law enforcement.

9.28(9) Good cause. In determining whether a victim has satisfied the requirement to report a crime to law enforcement, the division may consider the victim's age, physical condition and psychological state, and any compelling health or safety reasons that would jeopardize the well-being of the victim. The department may waive the 72-hour time period required for the filing of a report if good cause is shown.

9.28(10) Child victim. If the victim is a child as defined in Iowa Code section 232.2, a report to law enforcement is considered to have been made within the 72-hour reporting requirement, provided it is made within 72 hours of the discovery of the crime by the parent or guardian.

9.28(11) Dependent adult victim. If the victim is a dependent adult as defined in Iowa Code section 235B.2(4), a report to law enforcement is considered to have been made within the 72-hour reporting requirement when it is made within 72 hours of the discovery of the crime.

9.28(12) Sexual abuse victim. For a victim of sexual abuse, the requirement to report to law enforcement is considered to have been met if a sexual abuse evidentiary examination was completed within 72 hours of a crime and the victim files a subsequent law enforcement report.

61-9.29(912) Computation of compensation. The division shall determine the amount of compensation to be awarded to an eligible applicant. Compensation shall be made up to the limits established pursuant to Iowa Code chapter 912 at the time the application is filed.

9.29(1) Counseling fees. For the purposes of establishing reasonable charges

CRIME VICTIM COMPENSATION

for counseling provided by a victim counselor, as defined in Iowa Code section 236A.1, where fees for services to the general public for services of a similar nature have not previously been established, the following guidelines shall apply:

- a. Counseling provided by victim counselors whose position is funded, in whole or in part, or whose position is used as match requirement for federal Victims of Crime Act funds, shall not be eligible for compensation payment.
- b. Counseling services provided to an eligible victim by a victim counselor shall be compensated as follows:
 - (1) Individual counseling at an hourly rate of \$25.
 - (2) Group counseling at an hourly rate of \$10.
- c. Compensation paid, combined with other funding sources for the service, shall not be in excess of the total cost of providing the counseling hour.

9.29(2) Counseling with the perpetrator. Compensation for counseling shall be payable only for counseling sessions in which the perpetrator takes part where the purpose of the session is for the perpetrator to apologize to the victim and where victim is allowed to confront the perpetrator as to the effects of the compensable crime.

9.29(3) Family counseling. Compensation for family counseling shall be payable only for sessions where the focus of the session is to assist the victim in recovery from a compensable crime.

9.29(4) Lost wages or income. Eligible victims shall receive compensation for lost wages or income when unable to work as the result of a crime. A victim seeking lost wages or income for a period of more than two weeks of regular employment must provide the department with a disability statement from a licensed medical or osteopathic physician or surgeon. Lost wages or income due to crime is determined as follows:

- a. Lost wages are computed as the net rate of pay times the number of scheduled hours of work missed. To establish net rate of pay, gross wages are reduced by state, federal and FICA withholding tax or as follows:
 - (1) If the victim earns less than \$25,000 annually, gross wages are reduced by 15 percent to establish the net rate of pay.
 - (2) If the victim earns more than \$25,000 annually, gross wages are reduced by 20 percent to establish the net rate of pay.

CRIME VICTIM COMPENSATION

- b. Income that is variable shall be computed based on the average income earned during a minimum 28 day period within the three months preceding the crime.
- c. Lost wages or income shall not be reduced by vacation pay.
- d. If the victim is terminated from employment as a result of crime-related injuries, the victim shall receive compensation for lost wages or income until medically released to work.
- e. If the victim receives an offer of employment but is unable to begin employment because of injury due to the crime, the victim shall be reimbursed for lost wages or income until medically released to work.

9.29(5) Residential homicide scene cleanup. Cleaning a residential homicide scene means to remove, or attempt to remove, from the crime scene blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. The division shall compensate an eligible applicant for the reasonable out-of-pocket cost of cleaning supplies, equipment rental, labor, and the replacement value of property held for evidentiary purposes.

9.29(6) Loss of support. Compensation for loss of support shall be awarded for the dependents of a homicide victim or a victim disabled for a period of 60 days or more when the applicant documents that the dependent relied on the victim wholly or partially for physical care or financial support.

- a. Loss of support shall be awarded for the remaining period of dependency, up to the limits established in Iowa Code section 912.6(5), in an amount equal to the lost wages or income the victim was earning at the time of death or disability. The amount of compensation shall be subject to reduction by the amount of collateral sources designated as support pursuant to Iowa Code section 912.7(1).
- b. Loss of support shall be awarded at the current hourly rate of the Iowa minimum wage for dependent care, provided by a person other than the victim, if the victim was providing physical care to the dependent at the time of the crime.

9.29(7) Clothing and bedding. Compensation shall be made for clothing and bedding held as evidence by law enforcement and not returned to the victim. Compensation shall not be made for the clothing of a deceased victim which is held as evidence.

CRIME VICTIM COMPENSATION

9.29(8) Payer of last resort. Compensation shall not be paid for services where the provision for those services is mandated by law or administrative rule to be the responsibility of another government unit, private agency or program.

61-9.30(912) Reductions and disqualifications. The division shall reduce and disqualify compensation as follows:

9.30(1) Consent, provocation, and incitement. In assessing consent, provocation or incitement on the part of the victim, pursuant to Iowa Code section 912.7(2)"a," the division may consider, but is not limited to, the following factors:

- a. Whether charges are filed against the suspect;
- b. Whether the victim attempted to withdraw from the incident;
- c. Comparable or reasonable force on the part of the suspect in response to an action of the victim;
- d. The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;
- e. The age of the victim; and
- f. Comparable size or strength of the victim and suspect.

9.30(2) Consent. In assessing consent pursuant to Iowa Code section 912.7(2)(a) the division may consider the victim's age, physical condition and psychological state, AND any compelling health or safety reasons that would jeopardize the well-being of the victim. Where the victim was the passenger of a drunk driver, the division may also consider whether the victim could have reasonably known the intoxication level of the driver, the driver's behavior or judgment appeared impaired, the victim encouraged or discouraged the driver from driving, or the victim's judgment was impaired.

9.30(3) Provocation and incitement. In assessing provocation or incitement pursuant to Iowa Code section 912.7(2)(a) the division may consider law enforcement documentation that indicates:

- a. **Retaliatory action.** The crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could have reasonably foreseen the likelihood of retaliation.
- b. **Mutual combat.** The crime will be considered to be an incident of mutual combat if the victim:

CRIME VICTIM COMPENSATION

- (1) Initiated a physical altercation;
- (2) Made a credible threat of bodily harm against the person, took action to indicate the intent to carry out the threat and a physical altercation immediately followed; or
- (3) Accepted a verbal challenge to engage in a physical altercation, took action to indicate acceptance of the challenge and a physical altercation immediately followed. Incitement and provocation are not present in an incident of mutual combat when a significant escalation of the fight, such as the introduction of a deadly weapon, is made by a person other than the victim, or where a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.

- c. **Gang action.** The crime was a direct result of gang activity including gang initiation, or was inflicted as retaliation for prior gang activity in which the victim participated in a criminal street gang as defined in Iowa Code section 723A.1.

61-9.31(912) Eligibility.

9.31(1) Determination of eligibility. A denial of eligibility shall be based on written documentation that an application does not satisfy the requirements of Iowa Code Chapter 912. An applicant shall be deemed eligible for compensation if the division has not obtained written documentation supporting a denial within six months of the date of the application. Notwithstanding the foregoing, the division may extend the determination of eligibility beyond six months if a court date or grand jury hearing is pending and is reasonably expected to result in information necessary to render an eligibility decision.

9.31(2) Reopening applications. Pursuant to Iowa Code section 912.3(2) the department may reopen and reinvestigate an application if the department determines that the decision was incorrect or incomplete.

9.31(3) Maximum compensation available. Compensation shall be reduced or disqualified to the extent that the maximum compensation allowable through Iowa Code chapter 912 and these rules has been awarded.

61-9.32(912) Emergency award of compensation. Emergency awards of compensation shall be awarded as follows:

CRIME VICTIM COMPENSATION

9.32(1) Emergency award decision. A decision denying an emergency award shall not be appealable.

9.32(2) Offset. Any emergency award shall be deducted from the final compensation made to the applicant.

61-9.33(912) Appeal of compensation decisions. An applicant shall be informed in writing of the basis for the denial of eligibility or the amount of an award. An applicant may appeal a compensation decision as follows:

1. **Appeal to director.** An applicant aggrieved by a denial decision or the amount of compensation awarded by the program may appeal to the director.
2. **Appeal to board.** An applicant may appeal the director's decision to the board.
3. **Appeal to district court.** An applicant who disagrees with the decision of the board has the right to appeal to the district court within 30 days of receipt of the board's decision.

9.33(1) Director appeal period. An applicant shall submit a written request reconsideration with the director within 30 days of the date the notice of the crime victim compensation program decision is mailed or otherwise issued by the division. Any request for reconsideration postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 30 days of the receipt of the request for reconsideration, the director shall issue a decision.

9.33(2) Board appeal period. An applicant may file a request for consideration of the director's decision with the board. This written request for consideration shall be submitted for consideration by the board within 30 days of the date the notice of the director's decision is mailed or otherwise issued by the director. Any request for review postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 60 days of the receipt of the request, the board, or a committee designated by the chair of not less than five members of the board, shall issue a decision.

These rules are intended to implement Iowa Code chapter 912.

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