

CHAPTER 193  
FORMERLY  
HOUSE BILL NO. 253  
AS AMENDED BY  
HOUSE AMENDMENT NOS. 2 & 3

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO  
COMPENSATION FOR INNOCENT VICTIMS OF VIOLENT CRIME

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF  
DELAWARE:

Section 1. Amend Title 11 of the Delaware Code by deleting §§ 9001 through 9020 in their entirety and substituting in lieu thereof the following:

"§ 9001. Declaration of purpose.

The General Assembly hereby declares that it serves a purpose, and is of benefit to the State, to indemnify those persons who are victims of crimes committed within the State or Delaware victims of terrorist acts, and it is therefore the declared purpose of this chapter to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the families and dependents of those victims.

§ 9002. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(a) 'Agency' shall mean the Victims' Compensation Assistance Program.

(b) 'Appeals Board' shall mean the Victims' Compensation Assistance Program Appeals Board.

(c) 'Child' shall mean an unmarried person who is under 18 years of age, and shall include the stepchild, foster child, or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

(d) 'Council' shall mean the Victims' Compensation Assistance Program Advisory Council.

(e) 'Crime' for purposes of this chapter shall mean:

(1) Any specific offense set forth in Chapter 5 of this Title, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, unlawful use of firearms, stalking or endangering the welfare of a child;

(2) Any specific offense set forth in former Chapter 3 of this Title, if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape or any other sexual assault or sexual abuse, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;

(3) Any specific offense occurring in another state, possession or territory of the United States in which a person whose domicile is in Delaware is a victim, if the offense contains the characteristics of murder, rape or any other sexual assault or sexual abuse, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this Title;

(4) Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this Title, and contains the

characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;

(5) An act of terrorism, as defined in 18 U.S.C. § 2331, committed outside, or inside, the United States against a resident or domiciliary of this State;

(6) Driving under the influence of any alcohol or drug or driving with a prohibited blood alcohol concentration, or hit-and-run; or

(7) Any act of domestic violence or abuse.

(f) 'Dependent' shall mean a person wholly or substantially dependent upon the income of the victim at the time of victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of the victim.

(g) 'Guardian' shall mean any person, governmental instrumentality or private organization who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent.

(h) 'Incompetent' shall mean a person who is incapable of managing the person's own affairs, as determined by the Agency or by a court of competent jurisdiction.

(i) 'Pecuniary loss' in instances of personal injury shall include medical expenses, including psychiatric care and mental health counseling of the victim or secondary victims; nonmedical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past or future earnings (including, but not limited to, reimbursement for vacation, sick and compensatory time) because of a disability resulting from such personal injury. 'Pecuniary loss' in instances of death of the victim shall include funeral and burial expenses, loss of support to the dependents of the victim and mental health counseling to secondary victims. 'Pecuniary loss' includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage. Pecuniary loss includes, but is not limited to, the following:

(1) Crime scene cleanup not to exceed \$1,000;

(2) Temporary housing not to exceed \$1,500;

(3) Moving expenses not to exceed \$1,000;

(4) Essential personal safety property not to exceed \$1,500;

(5) Lost wages of parents or others charged with the care, custody or guardianship of a child victim while providing care to a child victim;

(6) Reasonable expenses, other than counseling of secondary victims where the victim has been killed by the act of a person during the commission of a crime, as defined in this chapter, not to exceed \$1,000;

(7) The deductible under a policy of automobile insurance where a motor vehicle is stolen in connection with a crime, as defined in this chapter, not to exceed the amount of the deductible;

(8) Housing-related expenses, including, but not limited to, mortgage, rent, security deposit, or other housing costs and furniture not to exceed 3 times the victim's monthly prospective housing cost;

(9) Loss of support for victims of violence, not to exceed \$3,000, when it is established that:

a. The offender was gainfully employed or had other legal income at the time the crime as defined by the chapter was committed against the victim;

b. The victim is fully or partially dependent on the income of the offender; and

c. The victim no longer has that income from the offender;

(10) Compensation for towing and impoundment expenses incurred as a direct result of a crime as defined in this chapter;

(11) The cost to change locks and replace items seized as evidence;

(12) Child care not to exceed the deposit plus 2 months of care by a state-approved or licensed day care provider; or

(13) Reimbursement for reasonable expenses incurred due to attendance at criminal proceedings as a witness for the prosecution;

(j) 'Personal injury' shall mean bodily harm; or mental, emotional or psychological harm, or shall include pregnancy resulting from the crime.

(k) 'Secondary victims' shall mean any parent, stepparent, grandparent, son, daughter, spouse, sibling, half sibling, fiancée, caretaker of the victim, any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence, the parents of a victim's spouse or any other person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime.

(l) 'Victim' shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this chapter.

#### § 9003. Advisory Council.

(a) This hereby establishes within the Department of Justice the Victim's Compensation Assistance Program Advisory Council, hereafter 'the Council,' consisting of 11 members with at large members appointed by the Governor. The following shall be members of the Council:

(1) The Attorney General or his/her designee;

(2) The Chairperson of the Victim's Rights Task Force or his/her designee;

(3) The Chairperson of the Domestic Violence Task Force or his/her designee;

(4) The Chairperson of the Sexual Assault Network of Delaware or his/her designee;

(5) Seven at large members with one member from the medical profession, one member from the mental health profession, one law enforcement police based advocate, and one member of the public each from the City of Wilmington, New Castle County, Kent County, and Sussex County.

(b) The term of Council members appointed by the Governor shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Council. A member shall continue to serve until his/her successor is duly appointed but a holdover under this provision does not affect the expiration date of a succeeding term.

(c) In case of a vacancy on the Council before the expiration of member's term, a successor shall be appointed by the Governor within 30 days of the vacancy for the remainder of the unexpired term.

(d) The Council shall elect one of its members as Chairperson to serve for a one year term and shall be eligible for reelection.

(e) The Council shall meet at the call of the Chair but no fewer than four times a year.

#### § 9004. Functions of the Council.

The Council shall have the following functions, powers and duties:

(a) To adopt, promulgate, amend and rescind such rules and regulations as are required to carry out this chapter.

(b) To serve in an advisory capacity to the Agency and Appeals Board.

§ 9005. Victim Compensation Assistance Program.

(a) This hereby establishes the Victim Compensation Assistance Program, hereafter the 'Agency,' which shall function under the authority of the Department of Justice and which shall have the sole jurisdiction over the awarding of compensation for victims of crime.

(b) Executive Director.

The Executive Director shall be appointed by and report to the Attorney General. The Executive Director shall manage the Agency staff and supervise the claims review process and payment of compensation to victims.

(c) The Executive Director and staff shall support the Advisory Council and the Appeals Board

(d) Staff.

The Executive Director may employ staff and contract for services as necessary and authorized to carry out the purpose of the Victim Compensation Assistance Program, Advisory Council and Appeals Board. The total number of employees of the Agency shall not exceed 8 at any given time.

§ 9006. Function of the Agency.

The Agency, subject to the approval of the Department of Justice, shall have the following functions, powers and duties:

(a) To meet and function at any place within the State of Delaware;

(b) To obtain the services of other governmental agencies upon request and to utilize those services when necessary;

(c) To receive, investigate, and determine awards, and to process for claims payment for emergency and indemnification applications filed pursuant to this chapter as follows:

(1) The Agency shall determine the award for claims for less than \$12,500, except for emergency claims, in which case an Appeals Board member shall be contacted and, if available, shall be part of the determination;

(2) The Agency and one Appeals Board member shall determine the award for any claim exceeding \$12,500; and

(3) When an Appeals Board member has been involved in the initial determination of a claim pursuant to paragraphs (1) or (2) of this subsection, that Appeals Board member shall be recused from any further consideration of that claim.

(d) To publish reports, information and other data collected by the Agency;

(e) To annually render to the Governor and General Assembly a written report of the agency's activities and recommendations;

(f) To provide indemnification claim forms for purposes of this chapter and to specify the information to be included in such forms; and

(g) To reimburse other governmental agencies pursuant to this chapter for emergency awards to victims, secondary victims, or claimants.

§ 9007. Victims' Compensation Assistance Program Appeals Board.

(a) There is hereby established the Victims' Compensation Assistance Program Appeals Board, hereafter 'Appeals Board', which shall be composed of 5 members to be appointed by the Governor and confirmed by the Senate. No more than 3 members shall be of 1 major political party. Appeals Board representation shall reflect representation from all counties of the State.

(b) Members of the Violent Crimes Compensation Board serving at the time of enactment of this statute will become the members of the Victims Compensation Appeals Board. They will serve the balance of their terms in accordance with the provisions of the statute in existence at the time of their last reappointment. Upon expiration of the current terms of the Appeals Board members, their compensation will be \$100 per meeting. The compensation of all other Appeals Board members shall be \$100 per meeting.

(c) The term of Appeals Board members shall be 3 years. A member shall continue to serve until his/her successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term.

§ 9008. Function of the Appeals Board.

(a) The Appeals Board shall have the power and authority to meet and function in any place within the State.

(b) The Appeals Board shall have the power and authority to affirm, reverse or modify the Agency's claims decisions subject to the provisions of § 9009 of this Title.

§ 9009. Administrative provisions; compensation.

In any instance in which a person sustains personal injury or is killed by any crime as the same is defined in this chapter, then the person or estate may file a claim with the Victims' Compensation Assistance Program, hereafter the 'Agency,' for indemnification of all pecuniary loss which is a direct result of such crime:

(a) If a claim is approved as filed, the award shall be the amount of pecuniary loss actually and reasonably sustained by reason of the personal injury in question minus the amount the claimant has or will receive as indemnification from any other source, including any applicable insurance.

(b) In the event of a death caused by a crime of violence, any person who legally or voluntarily assumes the obligation to pay the medical or burial expenses incurred as a direct result of such injury and death shall be eligible to file a claim with the Agency. This provision for payment in case of death shall not apply to any insurer or public entity.

(c) The Agency is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Agency may make its award of compensation dependent upon such condition or conditions as it deems desirable.

(d) If the claimant is dissatisfied with the Agency's decision, the claimant may, within 15 days after the date the decision is mailed, file a request for reconsideration of the claim. The request should include additional information from the claimant that supports the claim request. The agency's final decision will be mailed to the claimant.

(e) If the claimant is dissatisfied with the Agency's final decision, the claimant may, within 15 days after the date the decision is mailed, request a hearing before the Appeals Board.

(f) Any claimant who is dissatisfied by the Appeals Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the

Superior Court within 30 days following the date the decision of the Appeals Board is mailed to the claimant. Any appeal to Superior Court shall not be *de novo*.

(g) Payment may be made in accordance with this chapter, whether or not the alleged perpetrator of the criminal act is prosecuted or convicted, in the discretion of the Agency. Payment may be made even though the person committing the crime is legally deemed to not have intended the act by reason of age, insanity, drunkenness or is otherwise deemed legally incapable of *mens rea*.

(h) Upon determination of the Agency of the amount of compensation due, the Agency shall issue to the Delaware State Treasurer a statement certifying such amount. Upon receipt of such certification by the Agency, the Treasurer shall pay to the person named therein such amounts as are specified and under the conditions specified therein. The Treasurer shall make no payments until the time for appeal of the certification has passed unless the claimant has waived the right to appeal in writing. If an appeal is made, there shall be no payment until there has been a binding legal adjudication of the matter.

(i) A person whose domicile is in Delaware and who is the victim or secondary victim of a violent crime which occurs in another state, possession or territory of the United States may make an application for compensation if:

(1) The crimes would be compensable had they occurred in Delaware; and

(2) The placement or placements of the crime or crimes occurred in states, possessions or territories of the United States not having eligible crime victim compensation programs that provide benefits equal to the benefits provided pursuant to this chapter.

(j) Under no circumstances shall the Agency reopen or reinvestigate a case after the expiration of 2 years from the date of decision rendered by the Agency, except in cases of child sexual abuse of a minor by an adult.

(k) Notwithstanding the provision of paragraph (j) of this section and §9010(a) (3), (4) and (5) of this Title to the contrary, the Agency may make an award for the payment of mental health counseling services pursuant to this chapter upon a claim made by the victim of any crime which occurred prior to the victim's 18<sup>th</sup> birthday so long as the occurrence of the crime is appropriately documented, and such claim is filed prior to the victim's 20<sup>th</sup> birthday. The Agency may also, upon good cause shown, permit a victim whose claim had previously been decided by the Agency to request that such claim be reopened for the purpose of making an award for the payment for mental health counseling services, and the Agency may reopen or reinvestigate the case and award such compensation, if such victim had not yet reached that victim's 18<sup>th</sup> birthday by the date of the Agency's original decision, and provided that the request for reopening is filed prior to the victim's 20<sup>th</sup> birthday. However, the foregoing limitations in this subsection (11) regarding the victim's 20<sup>th</sup> birthday shall not apply in cases of crimes involving sexual assault or abuse.

(l) Notwithstanding any provision to the contrary, the Agency shall not limit acceptance or consideration of any applications arising from sexual assault or abuse of a minor by an adult which may have otherwise been barred from consideration by a statute of limitations.

§ 9010. Denial of claim; reduction.

(a) The Agency shall deny payment of a claim for the following reasons:

(1) Where the claimant was the perpetrator of the crime on which the claim is based, or was a principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred;

(2) Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime;

(3) Where the claimant refused to give reasonable cooperation to state or local law-enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question;

(4) Where the claim has not been filed within 1 year after the personal injury on which the claim is based, unless an extension is granted by the Agency;

(5) Where the claimant has failed to report the crime to a law enforcement agency within 72 hours of its occurrence. This requirement shall be waived where:

a. The crime has been reported to an appropriate governmental agency, such as child and/or adult protective services or the Family Court;

b. The claimant can provide a protection from abuse order;

c. The claimant has cooperated with law enforcement or an appropriate government agency in cases of crimes involving sexual assault or abuse; or

d. Where the Agency in its discretion determines that the circumstances of the crime render this requirement unreasonable.

(6) Where the victim is injured as a result of their own suicide or attempted suicide, unless the suicide or attempted suicide is directly related to a prior criminal victimization for which compensation is eligible pursuant to this chapter;

(7) Where the victim has sustained injuries during a drug-related crime in which the victim was an illegal participant;

(8) Where the victim is delinquent in the payment of any penalty assessment levied pursuant to § 9016 of this Title, or in the payment of an order of restitution payable to the Victim Compensation Fund; provided, however, that the Agency may condition payment of a claim upon the satisfaction of such delinquencies. In addition, the Agency may, for hardship or other good cause, waive the provisions of this paragraph in their entirety.

(b) In determining whether or not to make an award under this chapter, or in determining the amount of any award, the Agency may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(c) If the victim bears any share of responsibility that caused injury or death, the Agency shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.

(d) In no event shall the Agency deny any claim solely because the applicant was a child victim of sexual assault or abuse by an adult, and said applicant either delayed reporting the abuse or assault to authorities or said applicant delayed an application for services to mitigate the effects of the impact of sexual assault or abuse by an adult.

§ 9011. Payment of compensation.

(a) Any person, regardless of age or mental condition, is entitled to make application for compensation under this chapter if the person is a victim as defined herein. In any instance in which the person entitled to make application is deemed by law to be incompetent the person may nevertheless appear in person or the application may be made on the person's behalf by any person acting as a relative, guardian or attorney. Every victim making application shall be entitled to appear and be heard by the Agency in accordance with § 9012(b), (c), and (d) of this Title.

(b) Except in cases of dire hardship, as determined by the Agency, there shall be no payment of compensation where the claim is for less than \$25. Awards may be paid in a lump sum, or in periodic payments as determined by the Agency. Each and every payment shall be exempt from attachment, garnishment or any other remedy available to creditors for the collection of a debt.

(c) The Agency may require any injured person filing a claim pursuant to this chapter to submit to a physical or mental examination by a physician or physicians selected by the Agency.

(d) No compensation shall be awarded under the chapter to any individual victim (or in case of the death of the victim, to dependent relatives, or to the victim's legal representative) in a total amount in excess of \$25,000; provided, however, that the Agency may award compensation to victims who are permanently and totally disabled in an amount not to exceed \$50,000. The Agency shall deduct any payments received by the victim or by any of the victim's dependents from the offender or from any person on behalf of the offender, from any insurer, except life insurance proceeds, or from the United States, the State of Delaware or any state, or any of its political subdivisions from its award of compensation if such payments were in any manner made to compensate such person for personal injury or death arising from the same incident.

(e) Although a person otherwise incompetent may appear and press a claim before the Agency, payment of compensation shall not be made directly to any person legally incompetent to receive same but shall be made to a third person for the benefit of such incompetent. In the case of any payment for the benefit of a child or incompetent, the Agency shall order the payee to file an accounting with the Agency no later than January 31<sup>st</sup> of each year for the previous calendar year, and to take such other action as the Agency shall determine to be necessary and appropriate for the benefit of the child or incompetent.

§ 9012. Form of claim; Investigation; Hearing

(a) All claims filed with the Agency shall be written and shall accurately describe the crime and circumstances which brought about the injury, damage or death, shall state the time and place the injury occurred, state the names of all persons involved if known and shall contain the amount claimed by the applicant. The Agency shall initiate an investigation of the claim within 30 days of the filing of the claim. After this investigation, the Agency shall render a decision on whether or not to award compensation to the claimant, and if an award is made, the amount of that award. The Agency shall immediately mail a copy of its decision to the claimant, together with written notice of the claimants' options for redress if dissatisfied with the Agency decision.

(b) If the claimant is dissatisfied with the Agency's decision, the claimant may, within 15 days after the date the Agency decision is mailed, request either a reconsideration of the decision by the Executive Director or a review of the Agency's decision by the Appeals Board. If such request is not timely made, then the Agency decision shall be final and not appealable to the Appeals Board or the Superior Court, notwithstanding §9009(d), (e) and (f) of this Title.



(c) If a reconsideration is timely requested, the Executive Director shall review the claimants' information and render a final decision. This decision will immediately be mailed to the claimant, together with written notice of the claimant's right to request an appeal.

(d) If an appeal is timely requested, the Appeals Board shall fix the time and place for hearing the appeal. The Agency shall, at least 20 days before the time set for the hearing, mail notices of the time and place of such hearing to all interested persons and agencies. At the appeal hearing, the claimant may present evidence to the Appeals Board to show why the Agency's decision should be reversed or modified. Within 90 days of the conclusion of any and all hearings on the matter, the Appeals Board shall mail to the claimant a statement of its final decision to award or deny the claim and a statement of any conditions under which the claim shall be awarded. The Appeals Board may affirm, reverse or modify the Agency's decision.

§ 9013. Attorney fees.

A claimant need not be represented by an attorney before the Appeals Board, but if such person is represented the Appeals Board may award an amount for services rendered. Such fees shall not exceed \$1,000 or 15% of the amount awarded, whichever sum is less, and shall be in addition to the amount of compensation awarded to the claimant. An attorney shall not charge, demand, receive or collect for services rendered in connection with any proceedings under this chapter any amount other than awarded as attorney's fees under this section.

§ 9014. Recovery from the criminal.

(a) Whenever any person is convicted of an offense and a payment of compensation is, or has been, made under this chapter for a personal injury or death resulting from the act constituting such offense, the State may institute an action against such person for the recovery of the whole or any specified part of the compensation in any Superior Court within the State, or in any other court, either state or federal, if such court has custody or control of funds of the criminal or which may be awarded to the criminal. Any amounts recovered under this section shall be deposited to the fund which finances the administration of this chapter.

(b) Any payment of compensation under this chapter shall not affect any right of any person to recover damages in a civil action from the person or persons convicted of the offense giving rise to the claim for compensation.

§ 9015. Assignment and subrogation.

(a) Awards and recoveries granted under this chapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) There shall be no substitution or subrogation, whether conventional or legal, of any indebtedness or right of action by virtue of any claim of guarantee or surety, agency, lien, payments or advances made, or any claim made by the person convicted of the act giving rise to any compensation awarded under this chapter.

§ 9016. Penalty assessment.

(a) In addition to, and at the same time as, any fine is assessed to any criminal defendant or any child adjudicated delinquent, there shall be levied an additional penalty of 18 percent of every fine, penalty and forfeiture imposed and collected by the courts for crimes or offenses as defined in §233 of this Title. Where multiple offenses are involved, the penalty assessment shall be based upon the total fine for all offenses. When a fine, penalty or forfeiture is suspended, in whole or in

part, the penalty assessment shall not be suspended; provided, however, that if the penalty assessment herein imposed remains uncollected for a period in excess of 3 years, the courts may expunge the record of such assessment.

(b) Upon collection of the penalty assessment, the same shall be paid over to the Prothonotary or clerk of court as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this chapter, which account shall be designated the 'Victim Compensation Fund,' which is hereby created. Beginning with the fiscal year ending June 30, 2002, the unencumbered balances on June 30 of each fiscal year in excess of \$6,000,000 shall be deposited in the General Fund.

§ 9017. Annual reports.

The Department of Justice shall transmit to the Governor, State Auditor and the General Assembly an annual report of the activity of the Victim's Compensation Assistance Program under this chapter, including the claim number of each applicant for compensation, the amount claimed and the amount of compensation awarded.

§ 9018. Compensating fine.

In any court of the State of Delaware upon the conviction of any person or the adjudication of delinquency of any child for a crime resulting in the personal injury or death of another person, the court may, in addition to any other penalty, order such person to pay a compensating fine, in lieu of, but greater than, the penalty set forth in § 9016 of this Title. The amount of such fine shall be in the discretion of the court and shall be commensurate with the malice shown and the injury done to the victim. All fines paid in accordance with this section shall be deposited into the Victim Compensation Fund.

§ 9019. Oaths; production of witnesses and records.

The Executive Director and each member of the Appeals Board shall have the power to administer oaths, subpoena witnesses and compel the production of books, papers and records relevant to any investigation or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question, or produce any books, papers and records relevant to any such investigation or hearing may be compelled to do so by order of the Superior Court.

§ 9020. Filing false claim.

(a) Any claim under this chapter which is false in part or in whole shall constitute a false written statement in violation of §1233 of this Title.

(b) Any person who files a false claim under this chapter shall forfeit any compensation and shall reimburse and repay the Victims Compensation Assistance Program for any compensation received pursuant to this chapter.

§ 9021. Persons to whom chapter applicable.

This chapter shall apply to:

(1) All persons, including nonresidents of Delaware, who are victims of crimes committed on January 1, 1975, or thereafter within this State; and

(2) All Delaware residents and domiciliaries who are victims of terrorist acts.

§ 9022. Conflict of interest.

Any member of the Victims' Compensation Assistance Program, Advisory Council or Appeals Board with a direct or indirect interest in a matter in question shall disqualify himself or herself from any consideration of that matter.

§ 9023. Payment for forensic medical examinations for victims of sexual offense.

(a) The cost of a forensic medical examination done for the purpose of gathering evidence that can be used in the prosecution of a sexual offense may be paid from the Victim Compensation Fund.

(b) 'Forensic medical examination' shall be defined as medical diagnostic procedures examining for physical trauma, and determining penetration, force or lack of consent. The cost of the examination shall include collecting all evidence as called for in the sexual offense evidence collection kits and may include any of the following, if done as part of the forensic medical examination:

(1) Physician's fees for the collection of the patient history, physical, collection of specimens and treatment for the prevention of venereal disease, including 1 return follow-up visit;

(2) Emergency department expenses, including emergency room fees and cost of pelvic tray; and

(3) Laboratory expenses for wet mount for sperm, swabs for acid phosphates and ABH antigen; blood typing, serology for syphilis and Hepatitis B; cultures for gonorrhea, chlamydia, trichomonas and other sexually transmitted diseases; pregnancy testing; urinalysis; and any other laboratory test needed to collect evidence that could be used in the prosecution of the offense.

(c) Hospitals and health care professions shall provide forensic medical examinations free of charge to the victims of sexual offenses. Any hospital or health care professional performing a forensic medical examination shall seek reimbursement for the examination from the patient's insurance carrier, including Medicaid and Medicare, if available. If insurance is unavailable, or does not cover the full costs of the forensic medical examination, the service provider may seek reimbursement from the Compensation Fund. The Agency shall authorize the repayment for reasonable expenses incurred during the forensic medical examination. Such reimbursement shall not exceed a maximum amount to be determined by the Agency. If the hospital or health care professional has recovered from insurance, the Agency shall only provide compensation sufficient to total the maximum amount provided for in the Agency's rules and regulations.

(d) The victim of the sexual offense shall not pay any out-of-pocket costs associated with the forensic medical examination and shall not be required to file an application with the Agency. Notwithstanding other language in this chapter, all forensic medical examinations of victims of a sexual offense not covered by insurance shall be paid for through the Victim Compensation Fund and such payment shall be considered full compensation to the hospital or health care professional providing such services.

(e) In addition to, and at the same time as, any other fine or penalty assessed on any criminal defendant, all defendants convicted of a sexual offense as defined in §761 of this Title shall be assessed an additional fine that shall be used to reimburse the Victim Compensation Fund for forensic medical examination payments. All defendants convicted of sexual offenses shall pay \$50 for each misdemeanor level count for which they are convicted and \$100 for each felony level count for which they are convicted. All fines paid in accordance with this section shall be deposited into the Victims' Compensation Fund.

(f) Nothing in this section shall preclude victims from applying to the Agency for other costs incurred.

§ 9024. Payment for child psychological assessments and short-term counseling.

(a) The costs of a psychological assessment done for the purposes of evaluating the mental health needs of a child victim may be paid from the Victims' Compensation Fund.

(b) The costs of short-term counseling, as defined by the Agency, for the purposes of meeting the mental health needs of a child victim may be paid from the Victims' Compensation Fund.

(c) Any psychological assessment or counseling provided pursuant to this section shall be provided by a qualified mental health practitioner as determined by the Agency. The Agency shall authorize the repayment of reasonable expenses for a psychological assessment and/or short-term counseling. Such reimbursement shall not exceed a maximum amount to be determined by the Agency. Any mental health practitioner performing a psychological assessment and/or short-term counseling pursuant to this section shall seek reimbursement for such services from the patient's insurance carrier, including Medicaid and Medicare, if available. If the mental health practitioner has recovered from insurance, the Agency shall only provide compensation sufficient to total the maximum amount provided for in the Board's rules and regulations. Funding for psychological assessments and/or short-term counseling shall be available to the victim regardless of other health insurance resources which may exist.

(d) A parent or guardian acting on behalf of a child victim shall not pay any out-of-pocket costs associated with a psychological assessment or short-term counseling, and shall not be required to file an application with the Agency. Notwithstanding other language in this chapter, all psychological assessments and short-term counseling expenses of child victims shall be paid for through the Victims' Compensation Fund and such payment shall be considered full compensation to the mental health practitioner providing such services.

(e) Nothing in this section shall preclude a victim from applying to the Agency for other costs incurred.

(f) For the purpose of this section, 'child victim' or 'child' means any victim or person who had not yet reached that victim's or person's 18<sup>th</sup> birthday on the date of the commission of the crime.”

#### § 9025. Enactment

(a) To the extent that they may be under the administrative control of the Administrative Office of the Courts, as of July 1, 2009, the Executive Director and staff of the Violent Crime Compensation Board are transferred to the Department of Justice for budgetary and administrative purposes. Such employees shall be deemed to be employees of the Department of Justice with all benefits they may have accrued in the classified service as of July 1, 2009.

(b) The Advisory Council shall be established on July 1, 2009 and allow for the appointment of the 7 Advisory Council members by the Governor.

(c) The effective date for new process and procedures under the Victims' Compensation Assistance Program shall be 30 days after enactment of the bill.

(d) The effective date for all new and pending claims to be processed through the newly established Victims' Compensation Assistance Program shall be 30 days after enactment of the bill.

Approved August 07, 2009