

LAWS OF DELAWARE
VOLUME 83
CHAPTER 247
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 182
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO VICTIMS OF CRIMES.

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

Section 1. Amend § 9002, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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: For purposes of this chapter:~~

(1) "Agency" ~~shall mean~~ means the Victims' Compensation Assistance Program.

(2) "Appeals Board" ~~shall mean~~ means the Victims' Compensation Assistance Program Appeals Board.

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

(4) "Claimant" means victim, secondary victim, dependent, or any other person filing a claim under § 9012 of this title on behalf of a victim, secondary victim, or dependent.

(4) (5) "Council" ~~shall mean~~ means the Victims' Compensation Assistance Program Advisory Council.

(5) (6) "Crime" ~~for purposes of this chapter shall mean:~~ means any of the following:

a. 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~~ stalking, or endangering the welfare of a ~~child;~~ child.

b. 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~~ explosives, or unlawful use of ~~firearms;~~ firearms.

c. Any specific offense occurring in another state, ~~possession~~ possession, or territory of the United States or in violation of the United States Criminal Code, 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~~ explosives, or unlawful use of firearms as set forth in Chapter 5 of this ~~title;~~ title.

d. 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~~ explosives, or unlawful use of ~~firearms;~~ firearms.

e. 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;~~ State.

f. Any offense under the Criminal Code or the Motor Vehicle Code containing as an element the act of driving under the influence of alcohol or any drug or driving with a prohibited blood alcohol concentration, vehicular homicide in any degree, vehicular assault in any degree, operation of a motor vehicle causing death, ~~or leaving the scene of an~~ accident involving personal ~~injury~~; injury, or operation of a vehicle causing serious physical injury to a vulnerable user.

g. Any act that contains the characteristics of domestic violence or ~~abuse; or abuse.~~

h. Any act that contains the characteristics of human trafficking as defined in § 787 of this title.

~~(6)~~ (7) “Dependent” ~~shall mean used as a noun, means~~ a person wholly or substantially dependent ~~upon~~ on the income of the victim at the time of victim’s death, or would have been so dependent but for the ~~incompetency~~ incapacity of the victim due to the injury from which the death resulted, and ~~shall include~~ includes a child born after the death of the victim.

(8) “Executive Director” means the executive director of the Agency, except in § 9003 of this title.

~~(7)~~ (9) “Guardian” ~~shall mean~~ means any person, governmental ~~instrumentality~~ 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 person who is incapacitated.~~

~~(8)~~ “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.~~

~~(9)~~ (10) “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~~ means any other expenses actually and necessarily incurred as a result of the personal injury or death, personal injury or death resulting from a crime, but it does not include property damage. “Pecuniary loss” ~~includes, but is not limited to, the following:~~ includes the following, except that for secondary victims, “pecuniary loss” means what is in paragraphs (10)d. and (10)o. of this section, and for claimants in homicide cases, “pecuniary loss” means what is in paragraphs (10)b., (10)c., (10)d., (10) f., (10)h., (10)o., (10)s., (10)t., and (10)u. of this section:

a. Crime scene cleanup not to exceed ~~\$1,000;~~ \$1,000.

b. Temporary housing not to exceed ~~\$1,500;~~ \$1,500.

c. Moving expenses not to exceed ~~\$1,000;~~ \$1,000.

d. Essential personal safety property not to exceed ~~\$1,500;~~ \$1,500.

e. Lost wages of parents or others charged with the care, ~~eustody~~ custody, or guardianship of a ~~child-victim~~ while providing care to ~~a child-victim;~~ the victim.

f. 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,~~ crime, not to exceed ~~\$1,000;~~ \$1,000.

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

h. Housing-related expenses, ~~including, but not limited to,~~ including mortgage, rent, security deposit, or other housing costs and furniture not to exceed 3 times the ~~victim’s claimant’s~~ monthly prospective housing ~~cost;~~ cost.

i. Loss of support for victims of violence, not to exceed \$3,000, when ~~it is established that:~~ all of the following are established:

1. 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;~~ victim.

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

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

j. Compensation for towing and impoundment expenses incurred as a direct result of a ~~crime as defined in this chapter;~~ crime.

k. The cost to change locks and replace items seized as ~~evidence;~~ evidence.

l. Child care not to exceed the deposit plus 2 months of care by a state-approved or licensed day care ~~provider;~~ or provider.

m. Reimbursement for reasonable expenses incurred due to attendance at criminal proceedings as a witness for the ~~prosecution;~~ prosecution.

n. Medical expenses.

o. Psychiatric care and mental health counseling.

p. Nonmedical remedial care and treatment rendered in accordance with a religious method of healing.

q. Hospital expenses.

r. Loss of past or future earnings, including reimbursement for vacation, sick, and compensatory time, because of a disability resulting from personal injury.

s. Funeral expenses not to exceed \$5,000.

t. Burial expenses not to exceed \$2,500.

u. Loss of support to the dependents of a victim of homicide.

(11) “Person who is incapacitated” means a person who is incapable of managing the person’s own affairs, as determined by the Agency or by a court of competent jurisdiction.

(10) (12) “Personal injury” shall mean- means bodily harm; or- harm, mental, emotional or psychological harm, or shall include includes pregnancy resulting from the crime.

(11) (13) “Secondary victims victim” shall mean- means any parent, stepparent, grandparent, son, daughter, spouse, sibling, half-sibling, fiancé, 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 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. For purposes of receiving mental health counseling only, this definition includes any person who discovers and reports a homicide.

(12) (14) “Victim” shall mean- means a person who is injured sustains a personal injury or is killed by the act of any other person during the commission of a crime as defined in this chapter. crime.

Section 2. Amend § 9003, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9003. Advisory Council.

(a) This hereby establishes within the Department of ~~Justice~~ Justice, the ~~Victim's~~ Victims' 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:~~ Membership of the Council is as follows:

- (1) The Attorney General or the Attorney General's ~~designee;~~ designee.
- (2) The Chairperson of the Victim's Rights Task Force or the Chairperson's ~~designee;~~ designee.
- (3) The Chairperson of the Domestic Violence Task Force or the Chairperson's ~~designee;~~ designee.
- (4) ~~The Chairperson of the Sexual Assault Network of Delaware or the Chairperson's designee;~~ [Repealed.]

(5) Seven at-large members with 1 member from the medical profession, 1 member from the mental health profession, 1 member who is a law-enforcement police- ~~police-~~ based advocate, and ~~one~~ 1 member of the public each from the City of Wilmington, New Castle County, Kent County, and Sussex County.

(6) The Executive Director of the Delaware Alliance Against Sexual Violence or the Executive Director's designee.

(b) The term of Council members appointed by the Governor ~~shall be~~ is 3 years and ~~shall terminate upon~~ terminates on the Governor's appointment of a new member to the Council. A member shall continue to serve until that member's 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~~ of a member's term, a successor ~~shall~~ must be appointed by the Governor within 30 days of the vacancy for the remainder of the unexpired term.

(d) The Council shall elect 1 of its members as Chairperson to serve for a 1-year term and ~~shall~~ may be eligible for reelection.

Section 3. Amend § 9005, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9005. ~~Victim~~ Victims' Compensation Assistance Program.

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

(b) Executive Director. The Executive Director ~~shall~~ must 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;~~ claimants.

(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;~~ Agency, ~~Advisory Council~~ Council, and Appeals Board. ~~The total number of employees of the Agency shall not exceed 8 at any given time.~~

Section 4. Amend § 9006, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9006. Function of the Agency.

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

- (1) To meet and function at any place within the ~~State;~~ State.
- (2) To obtain the services of other governmental agencies ~~upon~~ on request and to utilize those services when ~~necessary;~~ necessary.

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

a. ~~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;~~

b. ~~The Agency and one Appeals Board member shall determine the award for any claim exceeding \$12,500;~~
and

e. ~~When an Appeals Board member has been involved in the initial determination of a claim pursuant to paragraph (3)a. or b. of this section, that Appeals Board member shall be recused from any further consideration of that claim.~~

(4) To publish reports, ~~information~~ information, and other data collected by the ~~Agency;~~ Agency.

(5) To annually render to the Governor and General Assembly a written report of the Agency's activities and ~~recommendations;~~ recommendations.

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

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

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

(9) To ~~recover~~ recover, through reimbursement by the criminal ~~defendant~~ defendant, the full amount of compensation paid to ~~victims of~~ claimants for crimes committed by the ~~defendant;~~ defendant.

(10) To ~~recover~~ recover, through reimbursement from ~~victims, claimants, and their dependents~~ claimants, funds received from other sources of payment, as set forth ~~herein; and~~ herein.

(11) To administer the ~~Victims~~ Victims' Compensation Fund established by this chapter.

Section 5. Amend § 9007, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ is composed of 5 members to be appointed by the Governor and confirmed by the Senate. No more than 3 members ~~shall~~ may be of 1 major political party. Appeals Board representation ~~shall~~ must reflect representation from all counties of the State.

(b) Members of the Violent Crimes Compensation Board serving on July 31, 2009, 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~~ is \$100 per meeting.

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

Section 6. Amend § 9008, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9008. Function of the Appeals Board.

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

(b) The Appeals Board ~~shall have~~ has the power and authority to affirm, ~~reverse~~ reverse, or modify the Agency's claims decisions ~~subject to~~ under the provisions of ~~§ 9009~~ § 9012 of this title.

Section 7. Amend § 9009, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ A claimant, including an estate, may file a claim with the ~~Victims' Compensation Assistance Program,~~ hereafter the "Agency," Agency for indemnification of all pecuniary ~~loss which is a direct result of such crime:~~ loss:

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

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

(3) 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~~ on conditions as it deems desirable.

(4) ~~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. [Repealed.]~~

(5) ~~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. [Repealed.]~~

(6) ~~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. [Repealed.]~~

(7) 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~~ drunkenness, or is otherwise deemed legally incapable of mens rea.

(8) 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. request payment be issued by the Delaware State Treasurer in accordance with the State of Delaware Budget and Accounting Manual or any succeeding document.~~

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

a. The crimes would be compensable had they occurred in ~~Delaware; and Delaware.~~

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

(10) Where compensation has been paid to a claimant, the Agency ~~shall~~ may not reopen or reinvestigate a case after 2 years from the date of the last payment by the Agency, or 1 year from the date the award was rendered if no payment has been made, except where the Agency in its discretion determines that the circumstances render this requirement unreasonable. Where compensation has been denied to a claimant, reopening and reinvestigation ~~shall~~ must be limited to the circumstances set forth in Superior Court Civil Rule 60.

(11) Notwithstanding the provision of paragraph (10) of this section and § 9010(a)(3), (4) ~~(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~~ under this chapter ~~upon~~ on a claim made by the victim of ~~any~~ a crime which ~~that~~ occurred ~~prior to~~ before the victim's eighteenth birthday so long as the occurrence of the crime is appropriately documented, and ~~such the~~ the claim is filed ~~prior to~~ before the victim's twentieth 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 the~~ the victim had not yet reached that victim's eighteenth birthday by the date of the Agency's original decision, and provided that the request for reopening is filed ~~prior to~~ before the victim's twentieth birthday. However, the foregoing limitations in this paragraph (11) regarding the victim's twentieth birthday ~~shall~~ do not apply in cases of crimes involving sexual assault or abuse.

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

(13) a. Notwithstanding the provisions of paragraph (10) of this section or any other provisions of this chapter to the contrary, where if any of the following apply, a victim or secondary victim of the crime committed by the offender may apply for reimbursement as set forth in paragraph (13)b. of this section:

1. Further investigation into a previously reported crime is initiated by a law-enforcement ~~agency;~~ agency.

2. An offender appears in any judicial or administrative proceeding regarding a criminal charge, conviction, or sentence, including ~~but not limited to~~ a trial, appeal, postconviction relief, mediation, penalty, parole or pardon ~~hearing;~~ hearing.

3. The offender is released from ~~incarceration;~~ incarceration.

4. The death penalty is imposed ~~pursuant to~~ under § 4209 of this title; title.

~~any victim or secondary victim of such crime committed by such offender may apply for reimbursement as set forth in paragraph (13)b. of this section.~~

b. A victim or secondary victim may apply for reimbursement of the following costs under the circumstances set forth in paragraph (13)a. of this section ~~for the following;~~ provided that the costs are incurred within 1 year before, or

within 2 years after, the opening of the investigation, the date of the judicial or administrative proceeding, or the release or execution date of the offender:

1. The cost of mental health counseling services, not to exceed 50 ~~sessions;~~ sessions.
2. Reasonable expenses incurred due to attendance at criminal ~~proceedings;~~ proceedings.
3. Expenses for essential personal safety property, not to exceed ~~\$1,500;~~ \$1,500.

~~provided that such costs are incurred within 1 year prior to, or within 2 years after, the opening of such investigation, the date of such judicial or administrative proceeding or the release or execution date of the offender.~~

c. Any payments made ~~pursuant to this subsection~~ under paragraph (13) of this section are subject to the provisions of ~~§ 9010~~ § 9010 of this title with regard to denial and reduction of claims, and to ~~§ 9011~~ § 9011 of this title with regard to payment.

Section 8. Amend § 9010, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9010. Denial of claim; reduction.

(a) The Agency shall deny payment of a claim for any of 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;~~ based.

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

(3) Where the ~~claimant~~ victim 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;~~ 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 or the ~~Agency in its discretion~~ Agency, in its discretion, determines that the circumstances render this requirement ~~unreasonable;~~ unreasonable.

(5) Where the ~~claimant~~ victim has failed to report the crime to a law-enforcement agency within 72 hours of its occurrence. This requirement ~~shall be~~ is waived ~~where;~~ in any of the following circumstances:

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

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

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

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

(6) Where the victim is injured as a result of that victim's 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~~ under this ~~chapter;~~ chapter.

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

(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. [Repealed.]~~

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

Section 9. Amend § 9011, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ claimant. In any instance in which the person entitled to make application is deemed by law to be ~~incompetent~~ a person who is incapacitated, 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~~ guardian, or attorney. Every ~~victim~~ claimant making application ~~shall be~~ is 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~~ may not be 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~~ All payment ~~shall be~~ is exempt from attachment, ~~garnishment~~ 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~~ under this chapter to submit to a physical or mental examination by a physician ~~or physicians~~ selected by the Agency.

(d) ~~No compensation shall~~ Compensation may not 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)~~ a claimant 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.

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

(f) The Agency shall deduct from its award of compensation any payments received from the following by the ~~victim, claimant, or by any of the victim's dependents, from:~~ claimant if the payment were in any manner made to compensate for the personal injury or death arising from the crime or incident giving rise to the claim:

- (1) The ~~offender;~~ offender.
- (2) Any person on behalf of the ~~offender;~~ offender.
- (3) Any ~~insurer;~~ insurer.
- (4) The United States or any ~~state;~~ or state.
- (5) The State of Delaware or any of its political ~~subdivisions;~~ subdivisions.

If such payments were in any manner made to compensate such person or persons for personal injury or death arising from the crime or incident giving rise to the claim.

(g) In the event that payment of an award of compensation has been received by the ~~victim or claimant, or any dependent of the victim, claimant,~~ and payments as set forth in subsection (f) of this section ~~above~~ are received, ~~the victim, claimant, or dependent~~ the claimant shall be is obligated to reimburse the Agency for ~~such~~ the funds received, to the full extent of the compensation paid by the ~~agency~~ Agency.

(h) The ~~Executive~~ Director ~~shall have~~ has authority to accept reimbursement of less than the full amount of compensation paid, but only in cases where the ~~victim, claimant, or dependent~~ claimant is subjected to extreme hardship, as determined in the sole discretion of the ~~Executive~~ Director.

(i) The reimbursement provisions of subsections (f), (g), and (h) of this section ~~above~~ shall do not apply to any life insurance proceeds.

Section 10. Amend § 9012, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9012. Form of claim; investigation—~~hearing~~.

(a) All claims filed with the Agency ~~shall must be in writing 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. on the Agency's provided claim form and signed by the claimant.~~ 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. claimant. The Agency shall immediately mail a copy of its decision to the claimant, together with written notice of the ~~claimants'~~ claimant's 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~~ 30 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.~~ file a request for reconsideration of the claim. The request must include additional information from the claimant that supports the claim request. If such the request is not timely made, then the Agency decision shall be is final and not appealable to the Appeals Board or the Superior Court, notwithstanding § 9009(4), (5) and (6) of this title. Court.

(c) If a reconsideration is timely requested, the Executive Director shall review the ~~claimants'~~ claimant's 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 the claimant is dissatisfied with the Agency's final decision, the claimant may, within 30 days after the date the decision is mailed, request a hearing before the Appeals Board. 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~~ the 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~~ will be awarded. The Appeals Board may affirm, ~~reverse~~ reverse, or modify the Agency's decision.

(e) The claimant or the Agency, if dissatisfied by the Appeals Board's decision concerning compensation or any conditions attached to the award of the compensation, may appeal to the Superior Court within 30 days following the date the

decision of the Appeals Board is mailed to the appealing party. An appeal to Superior Court must be based on the record of the Appeals Board hearing.

Section 11. Amend § 9014, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9014. Recovery from the criminal.

(b) Any payment of compensation under this chapter ~~shall not~~ does 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.

(c) Whenever any person is sentenced for an offense and compensation has been paid under this chapter to a ~~victim of such offense~~ claimant, the Agency may assert a claim for reimbursement of the Victims' Compensation Fund as restitution from the criminal defendant. In support of ~~such~~ the reimbursement claim, the Agency shall submit an affidavit with supporting documentation to the sentencing court, setting forth all payments made to ~~victims of such offenses~~ the claimant. Restitution may be awarded to the Agency. A hearing on restitution will be held ~~upon~~ on the timely request of the defendant. Where the compensation of the ~~victim~~ claimant is continuing, and the full amount of reimbursement due has not been established by the Agency, the affidavit may so state, and the sentencing court may reserve jurisdiction over any future claim for reimbursement to the Agency. Any supplemental claim for reimbursement to the Agency ~~shall~~ must be brought within 2 years of the ~~offense date~~ sentencing date, or ~~prior to~~ before the expiration of a term of probation imposed on the defendant for an offense giving rise to the claim for compensation, whichever date comes first. The courts shall establish procedures for determining the amount of reimbursement due to the Victims' Compensation Fund from offenders.

Section 12. Amend § 9016, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ must be levied an additional penalty of 18% of every fine, ~~penalty~~ penalty, and forfeiture imposed and collected by the courts for crimes or offenses as defined in § 233 of this title, or \$10 per offense of conviction, whichever is greater. Where multiple offenses are involved, the penalty assessment ~~shall~~ must be based ~~upon~~ on the total fine for all offenses. When a fine, ~~penalty~~ penalty, or forfeiture is suspended, in whole or in part, the penalty assessment ~~shall~~ must 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~~ the assessment.

(b) Upon collection of the penalty assessment, the ~~same~~ ~~shall~~ penalty assessment must be paid over to the prothonotary or clerk of ~~each~~ court, as the case may be, who shall collect the ~~same~~ penalty assessment and transmit it to the State Treasury to be deposited in a separate account for the administration of this chapter, which account ~~shall~~ must be designated the "Victim Victims' 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~~ must be deposited in the General Fund.

Section 13. Amend § 9017, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9017. Annual reports.

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

Section 14. Amend § 9018, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9018. Compensating fine.

In any court of the State 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, and in addition to reimbursement to the ~~Victims~~ Victims' Compensation Fund, 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~~ is in the discretion of the court and ~~shall~~ must be commensurate with the malice shown and the injury done to the victim. All fines paid in accordance with this section ~~shall~~ must be deposited into the ~~Victim~~ Victims' Compensation Fund.

Section 15. Amend § 9020, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9020. Filing false claim.

(a) Any claim under this ~~chapter~~ chapter, which is false in part or in ~~whole~~ whole, ~~shall constitute~~ constitutes 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~~ Agency for any compensation received ~~pursuant to~~ under this chapter.

Section 16. Amend § 9022, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9022. Conflict of interest.

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

Section 17. Amend § 9023, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ Victims' Compensation Fund.

(b) For purposes of this section, "~~Forensic~~ forensic medical examination" ~~shall be defined as~~ means medical diagnostic procedures examining for physical trauma, and determining penetration, ~~force~~ force, or lack of consent. The cost of the examination ~~shall~~ must 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~~ specimens, and treatment for the prevention of venereal disease or the provision of emergency contraception, including 1 return follow-up ~~visit;~~ visit.

(2) Emergency department expenses, including emergency room ~~fees and fees,~~ cost of pelvic ~~tray;~~ and tray, and transportation by ambulance.

(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~~ 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~~ professionals shall provide forensic medical examinations free of charge to the victims of sexual offenses. Any hospital or ~~health-care~~ 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 Victims' Compensation Fund. The Agency shall authorize the repayment for reasonable expenses incurred during the forensic medical examination. ~~Such~~ The reimbursement ~~shall not~~ may 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~~ must be paid for through the ~~Victim~~ Victims' Compensation Fund and ~~such~~ the payment ~~shall~~ must be considered full compensation to the hospital or ~~health-care~~ health-care professional providing ~~such~~ the 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~~ must be assessed an additional fine that ~~shall~~ must be used to reimburse the ~~Victim~~ Victims' 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~~ must be deposited into the Victims' Compensation Fund.

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

Approved October 20, 2021