



SPONSOR: Rep. J. Johnson & Sen. Poore  
Rep. Bolden

HOUSE OF REPRESENTATIVES  
147th GENERAL ASSEMBLY

HOUSE BILL NO. 408

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

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

1           Section 1. Amend §9006, Title 11 of the Delaware Code by making deletions as shown by strike through and  
2           insertions as shown by underline as follows:

3           § 9006 Function of the Agency.

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

6           (1) To meet and function at any place within the State;

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

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

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

14               b. The Agency and one Appeals Board member shall determine the award for any claim exceeding  
15               \$12,500; and

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

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

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

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

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

(8) To recover through reimbursement by the criminal defendant the full amount of compensation paid to victims of crimes committed by the defendant;

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

(10) To administer the Victims Compensation Fund established by this Chapter.

Section 2. 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.

(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.

(c) Whenever any person is sentenced for an offense and compensation has been paid under this chapter to a victim of such offense, the Agency may assert a claim for reimbursement of the Victims' Compensation Fund as restitution from the criminal defendant. In support of such claim, the Agency shall submit an affidavit with supporting documentation to the sentencing court, setting forth all payments made to victims of such offenses. Restitution may be awarded to the Agency. A hearing on restitution will be held upon the timely request of the defendant. Where the compensation of the victim 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 be brought within two years of the offense date, or prior to the expiration of a term of probation imposed on the defendant for an offense giving rise to the claim for compensation.

51 whichever date comes first. The courts shall establish procedures for determining the amount of reimbursement due to the  
52 Victims' Compensation Fund from offenders.

53 Section 3. Amend §9018, Title 11 of the Delaware Code by making deletions as shown by strike through and  
54 insertions as shown by underline as follows:

55 § 9018 Compensating fine.

56 In any court of the State upon the conviction of any person or the adjudication of delinquency of any child for a  
57 crime resulting in the personal injury or death of another person, the court may, in addition to any other penalty, and in  
58 addition to reimbursement to the Victims Compensation Fund, order such person to pay a compensating fine, in lieu of, but  
59 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  
60 shall be commensurate with the malice shown and the injury done to the victim. All fines paid in accordance with this  
61 section shall be deposited into the Victim Compensation Fund.

62 Section 4. Amend §9011, Title 11 of the Delaware Code by making deletions as shown by strike through and  
63 insertions as shown by underline as follows:

64 § 9011 Payment of compensation.

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

73 (f) The Agency shall deduct from its award of compensation any payments received by the victim, claimant, or by  
74 any of the victim's dependents, from:

75 (i) the offender;

76 (ii) any person on behalf of the offender;

77 (iii) any insurer;

78 (iv) the United States or any state; or

79 (v) the State of Delaware or any of its political subdivisions;

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

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

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

89 (i) The reimbursement provisions of subsections (f), (g), and (h) above shall not apply to any life insurance  
90 proceeds.

#### SYNOPSIS

This Bill (Section 1) clarifies the authority of the Victims Compensation Assistance Program ("VCAP") to recover from the offender and collateral sources the full amount of compensation paid to the victim(s) of crimes committed by the offender. Where the offender is convicted of crimes involving victims who have received compensation from VCAP, the agency may submit an affidavit and supporting documentation in and seek a restitution order for reimbursement of the Victims Compensation Fund (Section 2). This amendment is consistent with the longstanding practice of the criminal courts in ordering restitution payable to the VCF. The offender's obligation to reimburse the Fund is in addition to the 18% surcharge to the Fund added to any fines, and also in addition to any "compensating fine" assessed in the discretion of the court under the standard set forth in existing Section 9018 (Section 3). This amendment providing for reimbursement through the sentencing order is in addition to the existing civil remedies set forth in subsections (a) and (b) of Section 9014.

Section 4 of this Bill is intended to clarify the authority of VCAP to claim reimbursement from the victim, claimant, or dependents for payments received from collateral sources (other than life insurance). VCAP is entitled to reimbursement, regardless of whether the collateral payments are received before or after compensation from VCAP. The intent is for VCAP to be the payer of last resort, and to replenish the Victims' Compensation Fund for the benefit of future crime victims seeking compensation. In cases of extreme hardship, such as where the victim faces outstanding bills and future losses that exceed the net recovery from collateral sources, the VCAP Director may waive all or part of the statutory recovery.