# Senate Bill 319

## Expanding the Crime Victims Compensation and Sexual Assault Examination Programs

Crime Victims Compensation Board | **kycc.ky.gov**

# What is the Office of Claims and Appeals?

- The Office of Claims and Appeals manages and provides legal counsel and administrative support to the Board of Claims, Board of Tax Appeals, and Crime Victims Compensation Board.
  - Board of Claims: Exclusive jurisdiction over negligence claims against state employees or agencies.
  - Board of Tax Appeals: Hears and adjudicates appeals of tax assessments by taxing agencies.
  - Crime Victims Compensation Board: Decides claims for compensation submitted by victims of violent crime.
- Legal authority: KRS Chapter 49

# What is the Crime Victims Compensation Board?

- Provides financial compensation to or on behalf of victims of violent crime or other qualifying individuals.
- Administers the Sexual Assault Examination Program.
- Legal authority: KRS Chapter 49 and 802 KAR Chapter 3
- The Board is administratively attached to the Office of Claims and Appeals within the Public Protection Cabinet.

# Authority and Composition of the Crime Victims Compensation Board

- The Board hears matters relating to claims by a crime victim or a person with authority to act on behalf of a crime victim for compensation.
- The Board consists of three members:
  - Two members are either a victim, a close family member of a victim, or a victim advocate.
  - One member is an attorney with at least two (2) years of experience.

# Senate Bill 319

- Largest expansion of Crime Victims Compensation and Sexual Assault Examination programs in their history.
- Introduced by Sen. Denise Harper Angel in the General Assembly's 2024 Regular Session.
- The bill passed both chambers unanimously and Governor Andy Beshear signed it on April 4, 2024.
- The bill takes effect on July 15, 2024.

# **Prior to SB 319 who was eligible?**
# (KRS 49.280, 49.310 and 49.330)

Before SB 319, individuals were potentially eligible for crime victim compensation awards if they were:

- a victim of criminally injurious conduct;
- a surviving parent, spouse, or child of a victim of criminally injurious conduct who died as a direct result of such conduct;
- a person dependent for his or her principal support upon a victim who died as a result of the crime; or
- any person who is legally responsible for the medical expenses or funeral expenses of a victim.

# Who is eligible once SB 319 is law?
# (KRS 49.280, 49.310 and 49.330)

When SB 319 takes effect, claimant eligibility expands to:

- a victim of criminally injurious conduct;
- a surviving family member of a victim of criminally injurious conduct who died as a direct result of such conduct; (see next slide for more detail)*
- a person dependent for his or her principal support upon a victim who died as a result of the crime;
- any person who is legally responsible for the medical expenses or funeral expenses of a victim; or
- any person acting as the primary caregiver for a victim of criminally injurious conduct.*

*** = New under SB 319**

# **Expanded Family Definition**
# (KRS 49.280, 49.310 and 49.330)

For purposes of eligibility, “family” is defined as:

- A victim’s spouse.
- Any person related to the victim within the second degree of consanguinity
  - Parents, children, siblings, half-siblings, grandparents, and grandchildren.
- Any person maintaining a sexual relationship with the victim.
- Any person residing in the same household with the victim.
- Any stepchild, stepparent, stepbrother, or stepsister.

# Standard for Awarding Crime Victims Compensation Claim (KRS 49.370)

- To award a claim, the Board must find that:
  - Criminally injurious conduct occurred; and
  - The conduct resulted in physical or psychological injury to, or death of, the victim.
- SB 319 eliminates the requirements to (a) report the crime within 48 hours and (b) fully cooperate with law enforcement in order to be eligible for an award.*
- Awards cannot exceed out of pocket expenses, including loss of earning, support, or indebtedness.

*** = New under SB 319**

# What types of crimes qualify?

- Any victim may seek Crime Victims Compensation due to any crime from which the victim suffered physical or psychological injury.
  - Family members of victims may seek compensation due to any crime that resulted in injury or death to their relative, assuming they are otherwise eligible.
- Only limitation on compensable crimes relates to crimes involving vehicles.
  - The operation of motor vehicles, motorcycles, trains, boats, aircraft, or other vehicles may constitute criminally injurious conduct when the injury or death was:
    - intentionally inflicted;
    - involved an individual driving under the influence;
    - involved a hit and run; or
    - involved an operator of a vehicle who acted recklessly or wantonly.

# What can survivors claim?
(KRS 49.370)

- Medical expenses
- Mental health counseling expenses
- Loss of income
- Loss of support
- Funeral/burial expenses
- Relocation expenses*
- Temporary housing costs*
- Tattoo removal (survivors of human trafficking)*
- Crime scene cleanup*
- Reimbursement for items seized as evidence*
- Replacement/repair of windows and locks*
- Rehabilitative or wellness practices*
- Expenses related to court proceedings related to the crime*

*** = New award category under SB 319**

# Medical, Mental Health Counseling, Loss of Earnings/Support, and Funeral/Burial (KRS 49.370)

- **Total award maximum:** $50,000*
- **Medical/Mental Health Counseling**
  - Maximum: $50,000*
  - Out of pocket expenses for medically necessary treatment arising from crime-related injuries.
  - Two-year limit for Mental Health Counseling.
- **Funeral/Burial**
  - Maximum: $10,000*
  - Require contract for services.
- **Lost Wages/Loss of Support**
  - Maximum: $500/week*
  - Time missed from work as a result of direct victimization or providing care to victim
  - Loss of financial support from an individual as a result of the crime.
  - Require Employment Verification Form and, if requested, Physician or Mental Health Counselor's statement.
  - May include bereavement leave.

*** = Increase under SB 319**

# New Award Types
# Relocation and Temporary Housing
# (KRS 49.370)

- **Relocation**
  - Maximum: $2,000
  - Only victims and victim's dependent child can recover.
  - Crime occurred at primary residence and moving due to safety concerns.
  - Must be within six (6) months of crime.
- **Temporary Housing**
  - Maximum: $2,000
  - Only victim and victim's dependent child can recover.
  - Crime must occur at primary residence.
  - Costs incurred within thirty (30) days of crime when victim is unable to stay in residence due to crime.

# Other New Award Types in SB 319 (KRS 49.370)

- **Tattoo removal**: Only victims of human trafficking ($4,000 cap).
- **Crime scene cleanup**: Within thirty (30) days of the crime when committed at the primary residence or business of the victim ($2,000 cap).
- **Seized items**: Only for possessions of the victim or their dependent child when seized by law enforcement as evidence of the commission of the crime. ($500 cap per item).
- **Repair of windows and locks**: Only at primary residence for windows and locks damaged as a result of the crime ($1,500 cap).
- **Rehabilitative or wellness practices**: Must be recommended by a healthcare provider ($1,000 per year cap, maximum of two (2) years).
- **Expenses related to court proceedings**: Only eligible for a victim or a victim's caregiver.

# New Sexual Assault Cold Case Lump Sum Award
(KRS 49.370)

The Board may grant a lump sum $5,000 award to a victim for a sexual assault claim filed more than ten (10) years after the crime if:

- The delay in filing is due to a delay in the testing of or DNA profile matching from a sexual assault forensic examination kit or biological material collected as evidence related to the sexual offense; and
- The losses sustained by the victim are not otherwise provable due to the delay.

# Emergency Awards
(KRS 49.360)

- Board may grant emergency award if:
  - The claim will probably be awarded following a full investigation; and
  - Undue hardship will result to the claimant in the absence of immediate payment.
- Capped at $1,000* and deducted from eventual full award.
- Must issue a decision on emergency award request within two (2) weeks.*

*** = New in SB 319**

# **Reduction or Denial of a Claim**
# (KRS 49.280, 49.350 and 49.390)

- SB 319 eliminates denial and lifetime bar for failure to perfect.
  - Instead, the Board may dismiss with leave to refile. Victim may later revive claim.
- Contributory conduct – significantly limited by SB 319.
  - Victim can only be assessed contributory conduct if they:
    - Were charged with a criminal offense
    - Were offered immunity from prosecution in exchange for testimony
    - Knowingly participated in the criminal conduct
    - Engaged in mutual aggression

# **Reduction or Denial of a Claim**
# (KRS 49.280, 49.350 and 49.390)

Collateral source offsets include payments received or to be received by the victim as a result of the crime related injuries:

- From or on behalf of the criminal offender
- Under insurance programs mandated by law
- From public funds
- Under insurance contract where the individual is the insured or beneficiary
- From donations

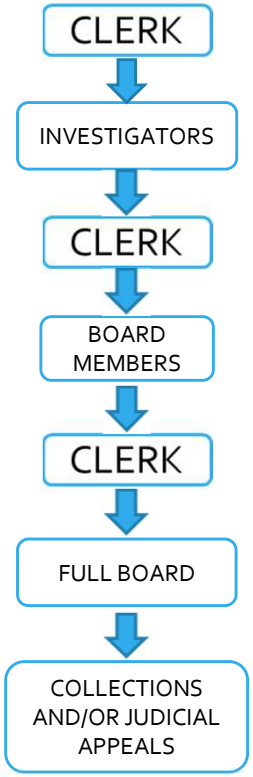
# SB 319 Claim Processing Changes

- SB 319 establishes time limits in which the Board's investigators must complete their claim investigations.
  - After July 1, 2025, investigators must complete their reports within 120 days of assignment.
  - After July 1, 2026, investigators must complete their reports within 90 days of assignment.
  - If report is not completed by then, must notify claimant of the reason for delay.
- The Office of Claims and Appeals must annually report to the Governor and Legislative Research Commission the number and percentage of cases in which the timeframes were not met.

# Other SB 319 Changes to Crime Victims Compensation Program

- Future Board decisions to be made available on the Board's website.
- Online application process.
- Claimant notified of right to counsel.
- Public claim tracking portal for use by claimants.
- Currently incarcerated individuals cannot file claims.

# Crime Victims Compensation Claims Process



# What is the Sexual Assault Examination Program? (KRS 216B.400 and KRS 49.490)

- Pays for the collection of evidence during the sexual assault examination and basic medical treatment for patients who present for a sexual assault examination, including HIV prophylaxis.
- SB 319 significantly expands the scope of the program.

# Sexual Assault Examination Program Award Categories and Caps (KRS 216B.400 and 802 KAR 3:020)

- Medical providers must bill qualifying services to victim's insurance then to the program. **Cannot bill the victim**.
- Services covered under the program include:
  - Sexual assault examinations, whether or not the exam is completed;
  - Prophylactic medical treatment;
  - Strangulation assessments; or
  - Other medical tests or services, including triage and ambulance expenses, related to the incident, exam, or treatment which occur on the same date as the original exam.
- Reimbursement rate shall not exceed the Medicaid reimbursement rate for the sameo or similar services.

# Denials of a Sexual Assault Examination Program Claim

- No bill submitted
- Sexual Assault Forensic Examination forms not properly completed
- Insurance pays above regulated amounts
- Uniform Billing Form 04 or Explanation of Benefits not submitted

# Recent Improvements to Crime Victims Compensation and Sexual Assault Examination Programs

- Passage of SB 319.
- When denying claims, the Board grants more claimants leave to refile in the future rather than denying for failure to perfect, which includes a permanent bar to refiling claim.
- Annual trauma-informed training for Board members and staff.
- Secured federal grant to hire victim advocate.
- Increase in Child Advocacy Center reimbursement rate ($538 to $894).

# Crime Victims Compensation
# Award Amounts and Total Victims Helped

- FY 2022
  - $579,918 paid in awards
  - 165 victims receiving awards
- FY 2023
  - $964,205 paid in awards
  - 246 victims receiving awards

# Crime Victims Compensation Claims Received, Awarded, and Denied

- FY 2022
  - 313 claims received
  - 165 claims awarded
  - 74 claims denied
  - 69% awarded
  - 31% denied
- FY 2023
  - 361 claims received
  - 249 claims awarded
  - 70 claims denied
  - 78% awarded
  - 22% denied

# Restitution Program and Revenue

- When the Board pays a Crime Victims Compensation claim, it creates a debt owed to the state by the offender.
- Revenue from restitution, donations, and Prison Industry Enhancement Certification Program (PIECP):
  - FY 2022: $82,650 total
  - FY 2023: $358,471 total
    - Outlier due to large $230,054 restitution payment to the Crime Victims Compensation Fund ordered by U.S. District Court for the Eastern District of Kentucky in large narcotics prosecution.

# Sexual Assault Examination Program Award Amounts and Total Victims Helped

- FY 2022:
  - $210,643
  - 513 awards paid on behalf of victims
- FY 2023:
  - $326,629
  - 717 awards paid on behalf of victims

# Sexual Assault Examination Program Claims Received, Awarded, and Denied

- FY 2022:
  - 889 claims received
  - 513 claims awarded
  - 235 claims denied
  - 68% awarded
  - 32% denied
- FY 2023:
  - 1,153 claims received
  - 717 claims awarded
  - 363 claims denied
  - 66% awarded
  - 34% denied

# Implementation of SB 319

- SB 319 takes effect July 15, 2024.
- To implement the provisions of the bill, the agency will:
  - Amend its administrative regulations to bring them into compliance with the bill.
  - Make changes to its website, forms, and processes to implement the changes included in SB 319.

- Executive Director
  - John Hardesty: 502-782-1045; john.hardesty@ky.gov
- Staff Attorney
  - Shelby Bevins-Sullivan: 502-782-3556; sbevinssullivan@ky.gov.
- Restitution/Collections Officer
  - Jennifer Barrie: 502-782-8254; jennifer.barrie@ky.gov
- Executive Staff Advisor
  - Raymond Shields: 502-782-8242; raymond.shields@ky.gov
- Claims Investigators
  - Caleb Hubbard: 502-782-1652; caleb.hubbard@ky.gov
  - Kristen White: 502-782-2180; kristen.white@ky.gov
- SAEP Coordinator
  - Cathy Greene: 502-782-8253; cathy.greene@ky.gov