

PUBLIC PROTECTION CABINET
Office of Claims and Appeals
Crime Victims Compensation Board
(Amendment)

802 KAR 3:010. Crime victims compensation.

RELATES TO: KRS 13B.100, 49.010, 49.020, 49.260 - 49.490, 216B.015, 216B.400

STATUTORY AUTHORITY: KRS 49.010(4)(b), 49.020(7)(a), 49.300(1), 49.370(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(1) and 49.300(1) authorize the Crime Victims Compensation Board to promulgate administrative regulations that are necessary to carry out the provisions of KRS 49.270 through 49.490. During the 2024 Regular Session, the General Assembly passed Senate Bill 319, which amended KRS 49.280, 49.310, 49.340 - 49.370, 49.400, and 216B.400. This administrative regulation establishes procedures for crime victims to file claims for compensation and further expounds on the requirements and provisions of the Crime Victims Compensation Board statutes.

Section 1. Definitions.

(1) "Board" means the Crime Victims Compensation Board.

(2) "Reckless" means a state of mind where the offender fails to perceive a substantial and unjustifiable risk that a particular result would occur.

(3) "Second Degree of Consanguinity" means individuals who are biologically related within two degrees to the victim, either ascending or descending.

(4) "Sexual Relationship" means a relationship in which the claimant and victim maintained a repeated and ongoing course of intimacy for an extended period.

(5) "Stepchild" means the biological or legally adopted offspring of the victim's legally-married spouse.

(6) "Stepparent" means the legal spouse of the victim's parent;

(7) "Stepsibling" means the biological or legally adopted offspring of the victim's stepparent.

(8) "Wanton" means a state of mind wherein the offender is aware of and consciously disregards a risk that a reasonable person in the same situation would not have disregarded.

Section 2. Claims Arising from Motor Vehicle Collisions. For purposes of a Crime Victims Compensation claim arising from injuries sustained in a vehicle accident, as established in KRS 49.280(3), the Board may find the vehicle operator acted recklessly or wantonly if:

(1) The vehicle operator is charged with or convicted of an offense related to the operation of the vehicle involving an element of recklessness or wantonness, including offenses under KRS 189A.010; or

(2) The vehicle operator was found to have, or admitted to having, operated a vehicle recklessly or wantonly in a criminal or civil action arising from the injury-causing incident.

Section 3. Eligible Claimants.

(1) The following individuals fall within the second degree of consanguinity:

(a) Parents of the victim;

(b) Children of the victim;

(c) Siblings and half-siblings of the victim;

(d) Grandparents of the victim; and

(e) Grandchildren of the victim.

(2) For purposes of KRS 49.310(1)(b), a surviving personal representative of the victim shall be a person appointed as the executor or administrator of the victim's estate by a competent court or a person legally authorized to act on the victim's behalf or on behalf of the victim's estate.

(3) To be eligible for an award due to maintaining a sexual relationship with the victim, the claimant shall demonstrate that:

(a) The claimant and victim engaged in consensual sexual intercourse more than once; and

(b) The sexual relationship was ongoing at the time the crime occurred.

(4) No more than two primary caregivers of the victim shall be eligible for an award pursuant to KRS 49.310(1)(e).

Section 4. Filing Claims.

(1) A claim shall be:

(a) Legibly written, typed, or printed on the Crime Victims Compensation Form;

(b) Signed by the claimant and the counsel representing the claimant, if any.

(2) A claim shall be filed by:

(a) In person or by private delivery to the Crime Victims Compensation Board, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) Mail to the address listed above; or

(c) Electronic mail to crimevictims@ky.gov, if the document can be sent in one (1) electronic message;

(d) Through the online claims portal at: <https://kycc.ky.gov/CVOnline/home>.

(3) If applying for lost wages or loss of support, a claim shall be supplemented by:

(a) A notarized Employment Verification form; and

(b) If requested by the Board staff:

1. A Physician Statement form; or

2. A Mental Health Counselor's Report form.

Section 5. Claim Tracking Portal.

(1) The tracking portal shall allow claimants to obtain status updates regarding their claim and progress of the claim's investigation.

(2) A claimant shall have access to the tracking portal within one (1) week of the filing of the claim.

(3) A claimant or victim's personally identifiable information shall remain secure and confidential. No information that may be used to determine whether an individual filed a claim with the Board shall be disclosed to unauthorized individuals.

Section 6. Timeframe for Processing Claims.

(1) A claim shall be considered filed on the date it is received by the Board either through the mail, personal delivery to the Board, the online claim portal, or the Board's official email.

(2) For claims filed after July 1, 2025, the claims investigator shall complete an investigative report on the claim within 120 days after it is assigned by the Board Clerk to the claims investigator.

(3) For claims filed after July 1, 2026, the claims investigator shall complete an investigative report on the claim within 90 days after it is assigned by the Board Clerk to the claims investigator.

Section 7. Kentucky Medical Assistance Program.

- (1) The Board shall cross-reference every claim with those claims that appear in the Kentucky Medical Assistance Program (KMAP) database maintained by the Cabinet for Health and Family Services.
- (2) If a crime victim is covered by Medicare or Medicaid, the Board's staff will provide the Board a list of:
 - (a) All itemized medical charges for which the victim seeks compensation; and
 - (b) The victim's services covered by medical assistance as reported in KMAP.
- (3) Upon making an award to a Medicaid-eligible crime victim, the Board shall not consider any medical bills submitted by or on behalf of the victim for any KMAP-covered services.
- (4) If the Board makes an award to a victim who received medical assistance for a KMAP-covered service, the KMAP as final payor shall not be responsible for the payment of any portion of the claim awarded by the Board.

Section 8. Lump Sum Payments to Survivors of Sexual Abuse.

- (1) For purposes of KRS 49.370(7), a claimant seeking an award under this provision shall submit the following:
 - (a) Proof the crime occurred more than ten (10) years prior to the date of filing of the claim;
 - (b) Proof that the sexual assault kit was collected;
 - (c) Proof of the collection date of the biological material;
 - (d) Proof the biological material went untested for an extended period; and
 - (e) Anecdotal proof of the damages incurred as a result of the crime.
- (2) The victim shall not be required to provide proof of actual expenses incurred.

Section 9. Incarcerated and Confined Persons.

- (1) Pursuant to KRS 49.330(4), a victim of criminally injurious conduct incarcerated in a correctional facility or confined in an institution maintained and operated by the Cabinet for Health and Family Services may apply for compensation upon release from the facility. This provision applies regardless if the criminally injurious conduct occurred during or prior to the individual's incarceration.
- (2) A victim of criminally injurious conduct shall not apply for compensation during incarceration or confinement.

Section 10. Default Claims and Leave to Refile.

- (1) If a claimant or victim fails to submit all required documentation within ninety (90) days of submitting the initial application, or within ninety (90) days after such a requirement is made by the Board, the claimant or victim shall be deemed in default.
- (2) If the claimant or victim defaults on the claim, the Board may dismiss the claim with leave to refile.
- (3) The claimant or victim may revive the claim by:
 - (a) Submitting a request to the Board Clerk via letter or email; and
 - (b) Providing copies of the previously required documents and information that were not submitted within the initial ninety-day (90) period; or
 - (c) Indicating to the Board Clerk that no such documents exist.
- (4) The claimant or victim shall not be required to submit a new application or any documentation previously submitted to the Board.

Section 11. Appeals of Board Decisions.

- (1) Following the issuance of a recommended order by a board member or the executive director, the claimant, victim, or offender shall have fifteen (15) days from the date the recommended order is served within which to file with the board exceptions to the recommended order.
- (2) The claimant, victim, or offender shall have the right and opportunity to attend the board meeting at which the recommended order will be considered and shall have the opportunity to be heard prior to the Board issuing a final order on the matter.
- (3) Pursuant to KRS 49.340(8), the claimant, victim, or offender aggrieved by a final order of the Board may appeal by filing a petition for judicial review in the county where the claim accrued or in Franklin Circuit Court, in accordance with KRS 13B.140.

Section 12. Decisions Based on Contributory Conduct.

- (1) Denials, reductions, and reconsiderations of claims made pursuant to KRS 49.390(2) shall be based on a preponderance of the evidence. This standard of review also shall apply to the Board's analysis and deliberations regarding whether to apply contributory conduct in a claim under consideration. The Board shall consider the totality of the circumstances when assessing whether it is appropriate to consider contributory conduct to reduce or deny a victim or claimant's claim.
- (2) In denying, reconsidering, or reducing an award in accordance with KRS 49.390(2), the Board may consider the following:
 - (a) The victim's ability to have reasonably avoided the situation;
 - (b) The extent and nature of the victim's injuries;
 - (c) Exhibition or use of a deadly weapon;
 - (d) The proportionate responsibility between the victim and the alleged offender(s);
 - (e) The opinions and conclusions of law enforcement investigators assigned to the criminal case, if any;
 - (f) The legal opinions and conclusions from prosecutorial agencies regarding the presentation of criminal charges and assessment of affirmative defenses, if any;
 - (g) Whether there is a causal relationship between the victim's conduct and their injuries;
 - (h) Whether the results of the victim's conduct were reasonably foreseeable to the victim; and
 - (i) The degree of harm that occurred as a result of the criminally injurious conduct and whether future harm may occur if compensation is denied.
- (3) Once the investigator completes his or her investigation and submits the investigation report to the assigned Board member, the Board member may review, among other available evidence, the opinions of law enforcement investigating officers and the prosecuting agency's assessment of evidence and application of affirmative defenses to determine whether there is a causal relationship between the criminally injurious conduct and the victim's conduct, and, if so, determine the proportionate responsibility of the victim and offender(s). Upon review, the Board member shall issue a recommended order, which shall include details regarding the assessment of contributory conduct, or remand the claim to the claims investigator if additional information is required to make a fully informed decision.

Section 13. Right to Counsel.

- (1) A claimant shall have the right to retain counsel of their choosing.
- (2) No counsel shall be appointed or provided by the Board to represent claimants.

Section 14. Attorney's Fees. If a claimant is represented by an attorney and the attorney so requests, the board, may, as a part of any award or by separate order subsequent to the award, allow a reasonable attorney's fee for the filing of a claim and any subsequent proceedings. Such fee shall not exceed fifteen (15) percent of the amount of the award, and shall be paid out of the award and not in addition to the award. No attorney, representing a claimant, shall not contract for or receive as a fee any sum larger than fifteen (15) percent of the amount of the award. Any fee contract in violation of this provision shall be void.

Section 15. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Crime Victim Compensation Form", January 2025;

- (b) "Employment Verification", August 2020;
- (c) "Physician's Statement", August 2020;
- (d) "Mental Health Counselor's Report", August 2020; and,
- (e) "Subpoena form", January 2025.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals, 500 Mero Street 2SC1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at https://kycc.ky.gov/newstatic_info.aspx?static_id=158.

LANOLA PARSONS, Chairperson, Crime Victims Compensation Board
JOHN HARDESTY, Executive Director

APPROVED BY AGENCY: January 14, 2025

FILED WITH LRC: January 15, 2025 at 10:32 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on March 27, 2025 in Room 247 CE of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may attend the hearing in-person or via Microsoft Teams videoconferencing. Those interested in attending virtually may access the meeting with the following link: Individuals interested in attending the public hearing virtually may access the hearing at: https://teams.microsoft.com/l/meetupjoin/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQtN2JnNjFkYzgzZjcw%40thread.v2?context=%7b%22Tid%22%3a%22d77c7f4d-d767-461f-b625-0628792e9e2a%22%2c%22Oid%22%3a%22636ef07a-f33f-4378-b8ae-79c6f05a1438%22%7d. The Meeting ID is: 237 908 005 529. The Passcode is: 48N9bQ2U. For phone access, please dial +1 502-632-6289, 867966031# and enter the following Phone Conference ID: 867 966 031#. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on March 31, 2024. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Shelby Bevins-Sullivan, Staff Attorney, 500 Mero Street, 2 SC 1, Frankfort, Kentucky 40601. Phone: (502) 782-3556. Fax: (502) 573-4817. Email: sbevinssullivan@ky.gov.