

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

802 KAR 3:010. Crime victims compensation.

RELATES TO: KRS ~~12.027, 13B.100, 49.010, 49.020,~~ 49.260 - 49.490, 216B.015, 216B.400 ~~[, EO 2020-708]~~

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

NECESSITY, FUNCTION, AND CONFORMITY: ~~{Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be established to include the Crime Victims Compensation Board. The Order also sets forth the powers and duties of the Crime Victims Compensation Board and authorizes the board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the board's statutory authority.}~~ KRS ~~49.020(1) and 49.300(1) authorize~~ authorizes 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. ~~{Definition.}~~

(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. ~~{Section 2.}~~ Filing Claims.

(1) A claim shall be:

(a) Legibly written, typed, or printed on the Crime ~~Victims~~ ~~{Victim}~~ 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) ~~{By}~~ Mail to the address listed above; or

(c) ~~{By}~~ 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. ~~Section 3.~~ 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. ~~Section 4.~~ 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 ~~the~~ 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 ~~an~~ 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. ~~Section 5.~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Crime Victim Compensation Form", January 2025; ~~August 2020;~~
- (b) "Employment Verification", August 2020;
- (c) ~~"Physician's [Physician] Statement", August 2020; and~~
- (d) "Mental Health Counselor's Report", August 2020; ~~and~~ ~~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~~St, 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; ~~http://evcb.ky.gov/Pages/default.aspx.~~

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/join/19%3ameeting_ZmM3NGRiODYtYjBmYi00ZWE4LTg1OWQtN2JjNjFkYzgZjcw%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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Shelby Bevins-Sullivan

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth the procedures for crime victims wishing to file a claim for compensation. It also amends the Crime Victims Compensation Board application and newly incorporates by reference the Board's subpoena form.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to comply with KRS 49.280, et seq., which was amended by Senate Bill 319 during the 2024 Regular Session.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; and, KRS 49.010(4)(b), 49.020(7)(a), and 49.300(1), which authorizes the promulgation of regulations to carry out the duties of the Office of Claims and Appeals and Crime Victims Compensation Board. KRS 49.020(7)(b) permits the Board to issue subpoenas. KRS 49.370(4) permits the Board to promulgate administrative regulations to establish guidelines for awards under that section.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The proposed regulation establishes the eligibility criteria of claimants, clarification on how motor vehicle accidents constitute criminally injurious conduct, methods of filing a claim with the Board, process of refiling a claim after defaulting, requires the Board to enact a written policy regarding the evaluation of claims involving contributory conduct, and processing of claims involving the delayed testing of sexual assault kits.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

See (1)(d).

(b) The necessity of the amendment to this administrative regulation:

See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes:

See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes:

See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, and any crime victim or individual filing a claim with the Crime Victims Compensation Board. The regulation also will affect victim advocates, law enforcement agencies, and victim service organizations that assist victims or family members of victims with filing Crime Victim Compensation claims.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The Office of Claims and Appeals and the Crime Victims Compensation Board will update all application forms and its website to include the new and amended forms. Victims and victim service organizations and agencies will need to begin using the new claim form or online claim filing portal and familiarize themselves with the new procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Current staff will implement the provisions of this amendment once promulgated, but it is estimated to cost the Office of Claims and Appeals approximately \$650,000 to hire new staff to fully comply with the statutory changes enacted in Senate Bill 319 and handle the projected significant increase in claim volume, and an additional \$500,000-\$750,000 per year in additional claim payments. The amendment will not incur additional costs on victims or victim service organizations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

More types of individuals will be eligible for compensation that were previously ineligible; the online claim portal allows for easier filing and tracking the claim's progress, promoting greater transparency; and, claimants will be able to refile claims at any point instead of being barred from refiling for failing to provide all requested documents. The Office of Claims and Appeals will benefit from having more staff to handle increased claim volumes and will be better equipped to meet claimants' needs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

Due to the projected increase in award payouts, the Crime Victims Compensation Board estimates that it will award an additional \$500,000-\$750,000 to claimants. Estimated costs for hiring new staff is \$650,000.

(b) On a continuing basis:

See 5(a). Approximately \$500,000-\$750,000 per year in additional claim payments and \$650,000 per year for additional staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current agency budgetary funding, which consists of restricted funds, general funds, and federal Victims of Crime Act grant funds will be used to implement and enforce this administrative regulation. Likewise, cash transfers from the Department of Insurance may be used, if necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 13B.005 et seq., KRS 49.020(7)(a), KRS 49.300(1), 34 U.S.C. § 10101, 34 U.S.C. § 20101 – 20111, 34 U.S.C. § 20121 – 20131, 34 U.S.C. § 20134 – 20145, 28 C.F.R. § 94.101, et seq., and 66 Fed. Register 27158 (May 16, 2001).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

The Public Protection Cabinet, Office of Claims and Appeals. The Crime Victims Compensation Board is the promulgating agency.

(a) Estimate the following for the first year:

Expenditures:The administrative regulation should not directly create any additional expenses for any state agency after implementation. It only provides clarification on new eligibility criteria, updates the claim filing process, and incorporates by reference updated forms. The new regulation was promulgated in response to the passage of Senate Bill 319, which went into effect on July 15, 2024. Senate Bill 319 created new claim categories, created new classes of claimants, increased the overall maximum award available for each incident, and increased the maximum available awards in several categories of claims. It is therefore anticipated that the Board will receive a larger number of claims and there is therefore a need for the hiring of additional staff. It is estimated that the cost of additional staff hired will be approximately \$650,000. The cost of the additional award amounts will be \$500,000-\$750,000 annually.

Revenues:The administrative regulation should not create any additional revenues for any state or local government agency in the first year following implementation.

Cost Savings:In the first year following implementation, the administrative regulation should not result in any cost savings as it only provides clarification on new eligibility criteria, updates the claim filing process, and incorporates by reference updated forms.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The administrative regulation should not directly create any additional expenses for any state agency in subsequent years.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

None.

(a) Estimate the following for the first year:

Expenditures:N/A

Revenues:N/A

Cost Savings:N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The administrative regulation should not create any additional expenditures, revenue, or cost savings in subsequent years for local entities.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Any person filing a claim with the Crime Victims Compensation Board and, indirectly, service providers who provide services that can be reimbursed by the board.

(a) Estimate the following for the first year:

Expenditures:N/A

Revenues:N/A

Cost Savings:N/A

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The administrative regulation should not create any additional expenditures, revenue, or cost savings in subsequent years for any entities.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

It is estimated that the Crime Victims Compensation Board will award an additional \$500,000-\$750,000 to claimants within the first year of the new statutory changes taking effect. Senate Bill 319 went into effect on July 15, 2024, increasing the overall maximum award the Board may award in a claim to \$50,000, the overall weekly award for lost earnings and loss of support to \$500.00, the overall funeral and burial expense award to \$10,000, and added new categories of expenses for which claimants may apply, such as replacement of windows and locks of the primary residence or business, rehabilitative and wellness practices, relocation and temporary housing, tattoo removal for victims of human trafficking, crime scene cleanup, among others. The Board expects that it will significantly increase payouts to claimants based on these new statutory changes. To hire new staff, it is estimated that it will cost approximately \$650,000. In total, it will cost approximately \$1,150,000 - \$1,400,000. It is important to note that the United States Department of Justice administers grants to crime victims compensation programs through the Victims of Crime Act ("VOCA"), 34 U.S. Code §20101, et seq., which reimburses state programs seventy-five percent (75%) of the amount programs pay out in state dollars for claims in a fiscal year. However, because of how the funding scheme operates, the Crime Victims Compensation Board does not receive the grant funds for two (2) years after the fiscal year concludes.

(b) Methodology and resources used to determine the fiscal impact:

The number of additional employees which will be necessary to ensure efficient operation of the program and efficient processing of claims was determined by an analysis of the number of claims handled under the prior iteration of the statute by existing staff and an estimate of how many additional claims are expected to be filed due to the expansion of available claimants and the addition of additional claims categories which are expected to increase the number of claims filed with the Board appreciably.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

See 5(a). This regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:
See 5(b).