

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 19.2-368.5, 19.2-368.10, 19.2-368.11:1, and 19.2-368.17 of the Code of Virginia, relating to compensating victims of crime.

[H 1968]

Approved

Be it enacted by the General Assembly of Virginia:
1. That §§ 19.2-368.5, 19.2-368.10, 19.2-368.11:1, and 19.2-368.17 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-368.5. Filing of claims; deferral of proceedings; restitution.

A. A claim may be filed by a person eligible to receive an award, as provided in § 19.2-368.4, or if such person is a minor, by his parent or guardian. In any case in which the person entitled to make a claim is incapacitated, the claim may be filed on his behalf by his guardian, conservator or such other individual authorized to administer his estate.

B. A claim shall be filed by the claimant not later than ~~one year~~ *three years* after the occurrence of the crime upon which such claim is based, or not later than ~~one year~~ *three years* after the death of the victim. However, (i) in cases involving claims made on behalf of a minor or a person who is incapacitated, the provisions of subsection A of § 8.01-229 shall apply to toll the ~~one-year three-year~~ period; (ii) in cases involving claims made by a victim against profits of crime held in escrow pursuant to Chapter 21.2 (§ 19.2-368.19 et seq.) ~~of this title~~, the claim shall be filed within five years of the date of the special order of escrow; and (iii) in cases involving claims of sexual abuse of a minor, the claim shall be filed within 10 years after the minor's eighteenth birthday, except for in cases involving claims of sexual abuse of a minor where the conduct constitutes a felony, the passage of time shall not be a barrier to when the victim can file a claim. For good cause shown, the Commission may extend the time for filing for a crime committed on or after July 1, 2001.

In the case of a crime committed on or after July 1, 1977, and before July 1, 2001, for which a claim was not filed in a timely manner, the Commission may, for good cause shown, extend the time for filing if the attorney for the Commonwealth sends written notification to the Commission that the crime is being investigated as a result of newly discovered evidence. For any claim filed pursuant to this paragraph, the Commission shall only consider expenses and loss of earnings that the claimant accrues after the date of newly discovered evidence as stipulated in the written notification by the attorney for the Commonwealth.

C. Claims shall be filed in the office of the Commission in person, by mail, or by electronic means in accordance with standards approved by the Commission. The Commission shall accept for filing all claims submitted by persons eligible under subsection A ~~of this section~~ and alleging the jurisdictional requirements set forth in this chapter and meeting the requirements as to form in the rules and regulations of the Commission.

D. Upon filing of a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred, *except when such claim is filed without the crime being reported to law enforcement*. If, within 10 days after such notification, the attorney for the Commonwealth so notified advises the Commission that a criminal prosecution is pending upon the same alleged crime, the Commission shall defer all proceedings under this chapter until such time as such criminal prosecution has been concluded in the circuit court unless notification is received from the attorney for the Commonwealth that no objection is made to a continuation of the investigation and determination of the claim. When such criminal prosecution has been concluded in the circuit court the attorney for the Commonwealth shall promptly so notify the Commission. Nothing in this section shall be construed to mean that the Commission is to defer proceedings upon the filing of an appeal, nor shall this section be construed to limit the authority of the Commission to grant emergency awards as hereinafter provided. Upon awarding a claim pursuant to this chapter, the Commission shall promptly notify the attorney for the Commonwealth of the jurisdiction wherein the crime is alleged to have occurred. If a criminal prosecution occurs regarding the same alleged crime, the attorney for the Commonwealth shall request the court to order restitution. However, neither the lack of a restitution order, nor the failure of the attorney for the Commonwealth to request such an order, shall preclude the Fund from exercising its subrogation rights pursuant to § 19.2-368.15. Any such restitution shall be paid over to the Comptroller for deposit into the Criminal Injuries Compensation Fund to the extent of the amount of the award paid from the Fund.

§ 19.2-368.10. When awards to be made; reporting crime to law enforcement.

No award shall be made unless the Commission finds that:

1. A crime was committed;

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2. Such crime directly resulted in an individual becoming a victim as defined in § 19.2-368.2, on whose behalf a claim is filed; and

3. Police or court records show that such crime was promptly reported to the proper authorities. In no case may an award be made where the police records show that determining if such report crime was made more than 120 hours after the occurrence of such crime, unless promptly reported, the Commission, for good cause shown, finds the delay to have been justified shall consider (i) any police records; (ii) the victim's physical, emotional, mental, and family situation; and (iii) the existence of a permanent protective order, issued pursuant to § 16.1-279.1 or 19.2-152.10, for the victim or other persons eligible for awards as identified in § 19.2-368.4 from the person responsible for the qualifying crime. The provisions of this subdivision shall not apply to claims of sexual abuse.

The Commission, upon finding that any claimant or award recipient has not fully cooperated with all law-enforcement agencies, unless the law-enforcement agency certifies that the claimant or award recipient was willing but unable to cooperate due to a good faith belief that such cooperation would have endangered such claimant or award recipient and such claimant or award recipient was not provided with any victim or witness protection services when such protection services were requested by a law-enforcement agency, may deny, reduce, or withdraw any award, as the case may be.

§ 19.2-368.11:1. Amount of award.

A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss of earnings that results directly from incapacity incurred by a crime victim shall be payable during total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to 66-2/3 percent of the victim's average weekly wages. The victim's average weekly wages shall be determined as provided in § 65.2-101.

B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial loss of earnings which that results directly from incapacity incurred by a crime victim shall be payable during incapacity at a weekly rate equal to 66-2/3 percent of the difference between the victim's average weekly wages before the injury and the weekly wages which that the victim is able to earn thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed \$600 per week.

C. Compensation for Loss of Earnings of Parent of Minor Victim: The parent or guardian of a minor crime victim may receive compensation for loss of earnings, calculated as specified in subsections A and B, for time spent obtaining medical treatment for the child and for accompanying the child to, attending or participating in investigative, prosecutorial, judicial, adjudicatory and post-conviction proceedings.

D. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the provisions of §§ 65.2-512 and 65.2-515 in an amount not to exceed the maximum aggregate payment or the maximum weekly compensation which that would have been payable to the deceased victim under this section.

E. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may also be made on claims or portions of claims based upon the claimant's actual expenses incurred as are determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family, if he had not been a victim of crime; (iii) expenses directly related to funeral or burial, not to exceed \$10,000; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) mental health counseling for survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4, not to exceed \$3,500 per claim; (vi) reasonable and necessary moving expenses, not to exceed \$2,000, incurred by a victim or survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4; and (vii) any other reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically provided for. Notwithstanding any other provision of law, a person who is not eligible for an award under subsection A of § 19.2-368.4 who pays expenses directly related to funeral or burial is eligible for reimbursement subject to the limitations of this section.

F. Notwithstanding the provisions of subdivision 3 of § 19.2-368.10, §§ 19.2-368.5, 19.2-368.5:1, 19.2-368.6, 19.2-368.7, and 19.2-368.8, subsection G of this section, and § 19.2-368.16, the Criminal Injuries Compensation Fund shall pay for physical evidence recovery kit examinations conducted on victims of sexual assault. Any individual that submits to and completes a physical evidence recovery kit examination shall be considered to have met the reporting and cooperation requirements of this chapter. Funds paid for physical evidence recovery kit collection shall not be offset against the Fund's maximum allowable award as provided in subsection H. Payments may be subject to negotiated agreements with the provider. Health care providers that complete physical evidence recovery kit examinations may bill the Fund directly subject to the provisions of § 19.2-368.5:2. The Commission shall develop policies for a distinct payment process for physical evidence recovery kit examination expenses as required under subdivision 1 of § 19.2-368.3.

In order for the Fund to consider additional crime-related expenses, victims shall file with the Fund following the provisions of this chapter and Criminal Injuries Compensation Fund policy.

G. Any claim made pursuant to this chapter shall be reduced by the amount of any payments received or

119 to be received as a result of the injury from or on behalf of the person who committed the crime or from any
120 other public or private source, including an emergency award by the Commission pursuant to § 19.2-368.9.

121 H. To qualify for an award under this chapter, a claim must have a minimum value of \$100, and payments
122 for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment for covered
123 expenses, after being reduced as provided in subsection G, shall not exceed \$35,000 in the aggregate.

124 **§ 19.2-368.17. Public information program.**

125 The Commission shall establish and conduct a public information program to assure extensive and
126 continuing publicity and public awareness of the provisions of this chapter. The public information program
127 shall include brochures, posters and public service advertisements for television, radio and print media for
128 dissemination to the public of information regarding the right to compensation for innocent victims of crime,
129 including information on the right to file a claim, the scope of coverage, and the procedures to be utilized
130 incident thereto.

131 Whenever a crime ~~which~~ *that* directly resulted in personal physical injury to, or death of, an individual is
132 reported ~~within the time required by~~ *pursuant to* § 19.2-368.10, the law-enforcement agency to which the
133 report is made shall make reasonable efforts, where practicable, to notify the victim or other potential
134 claimant in writing on forms prepared by the Commission of his or her possible right to file a claim under this
135 chapter. In any event, no liability or cause of action shall arise from the failure to so notify a victim of crime
136 or other potential claimant.