

## CRIME VICTIMS REPARATIONS BOARD

**SUBJECT:** Amendments to Rules and Regulations

**DESCRIPTION:** The board is proposing the make the following amendments:

1. Currently, the Sexual Assault Reimbursement Program, also administered by the Arkansas Crime Victims Reparations Board, covers the cost of forensic exams if treatment is sought within 72 hours. This amendment would extend the time to 96 hours as information obtained from the Arkansas State Crime Lab indicates advances in DNA technology allow the crime lab to work with very limited samples.
2. This defines a claimant's eligibility for a deceased victim's lost wages.
3. This defines a claimant's eligibility for economic loss or future support related to a deceased victim.
4. This clarifies the definition of an authorized representative of a claimant at an appeal hearing.

**PUBLIC COMMENT:** No public hearing was held. The public comment period expired on March 14, 2014. No public comments were submitted to the agency.

Jessica Sutton, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) On page 12 of the rules, paragraphs 10 and 11 cite Ark. Code Ann. § 16-90-703(4)(A)(ii) as the definition of "claimant." Should that be § 16-90-703(3)(A)(ii)?  
**RESPONSE:** Yes, change was made.

(2) On page 18 of the rules, concerning the emergency medical-legal examination, the rules amend the 72 hour time limitation to 96 hours. However, Arkansas Code Annotated § 12-12-403 states that the victim must receive the medical-legal examination within 72 hours of the attack, not 96 hours. **RESPONSE:** The rule was revised to change the language back to the 72 hour time limitation in accordance with the law.

The proposed effective date is December 10, 2014.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:** There is no financial impact.

**LEGAL AUTHORIZATION:** The Crime Victims Reparations Board is authorized to award reparations for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for reparations have been met. Ark. Code Ann. § 16-90-706(a)(1). The board has rulemaking authority under Ark. Code Ann. § 16-90-706.

**ARKANSAS CRIME VICTIMS REPARATIONS BOARD**

**RULES AND REGULATIONS**

**January, 2011**

**BOARD MEMBERS**

<b>Jan Church, PhD., Chairman</b> <i>Psychologist</i>	<b>Little Rock</b>
<b>Colleen Nick</b> <i>Victim Advocate</i>	<b>Alma</b>
<b>Bryce Brewer</b> <i>Attorney</i>	<b>Little Rock</b>
<b>Alex Finger</b> <i>Victim Advocate</i>	<b>Little Rock</b>
<b>Louis Jones</b> <i>Attorney</i>	<b>Fayetteville</b>

**STAFF**

<b>Will Jones</b>	<b>Assistant Attorney General</b>
<b>Avis Lane</b>	<b>Administrator</b>
<b>Lynette Parham</b>	<b>Assistant Administrator</b>
<b>Wendy Sanders</b>	<b>Investigator</b>
<b>Rhonda Swindle</b>	<b>Investigator</b>
<b>Jimmy Ellington</b>	<b>Investigator</b>
<b>Ramon Stewart</b>	<b>Investigator</b>
<b>Shaun Greening</b>	<b>Investigator</b>
<b>Richard Goodwin</b>	<b>Investigator</b>
<b>Ruth Wilson</b>	<b>Fiscal Specialist</b>
<b>Varnell Messer</b>	<b>Secretary</b>

# ARKANSAS CRIME VICTIMS REPARATIONS BOARD

## Rules and Regulations

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# ARKANSAS CRIME VICTIMS REPARATIONS BOARD

## Rules and Regulations

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**Rule No. 1**

**TITLE AND OPERATIVE DATE OF THE ACT**

The title of the Act under which these rules and regulations are being promulgated is known as the Arkansas Crime Victims Reparations Act, hereinafter referred to as the Act.

The operative date of the Act is July 1, 1988.

**Rule No. 2**

**DEFINITIONS**

1. **BOARD** - Means the Arkansas Crime Victims Reparations Board, hereinafter referred to as the Board.
2. **CLAIMANT** - Means any of the following persons applying for reparations under this act:
  - a. a victim,
  - b. a dependent of a victim who has died because of criminally injurious conduct, or
  - c. a person authorized to act on behalf of any of the persons listed above.

The term shall not include a service provider.

3. **VICTIM** - Means a person who suffers personal injury or death as a result of criminally injurious conduct committed within the state of Arkansas. The term further includes any Arkansas resident who suffers personal injury as the result of criminally injurious conduct which occurs in states presently not having crime victims reparations programs for which the victim is eligible and any Arkansas resident who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.

The term "victim" shall include a person who:

- (A) is an immediate family member of a deceased victim, a victim of sexual assault, or a child victim;
- (B) is not an immediate family member, but resided, at the time of the crime, in the same permanent household as a deceased victim;
- (C) discovered the body of a victim who dies as the result of criminally injurious conduct.
- (D) is the minor child, whether by blood, adoption, or marriage, of an eligible victim.

4. **DEPENDENT** - Means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of a victim born after the death of the victim where the death occurred as a result of criminally injurious conduct.

5. **IMMEDIATE FAMILY** - Means a person's spouse, children, parents or guardian, siblings, and grandparents whether related by blood, adoption, or marriage.

**6. CRIMINALLY INJURIOUS CONDUCT** - Means an act which occurs or is attempted in this state that results in personal injury or death to a victim which is punishable by fine, imprisonment or death. This term shall include acts of terrorism committed outside of the United States as defined in §2331, Title 18, United States Code, against any Arkansas resident. This term shall not include acts arising out of the operation of motor vehicles, boats or aircraft unless the acts involve any of the following:

- (A) Injury or death intentionally inflicted through the use of a motor vehicle, boat, or aircraft;
- (B) A violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq;
- (C) A violation of A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death).

**7. PERSONAL INJURY** - Means actual bodily harm, including pregnancy or mental anguish, which is the direct result of a violent criminal act.

**8. ECONOMIC LOSS** - Means monetary detriment consisting of allowable expense, and work loss, but shall not include non-economic detriment.

**9. ALLOWABLE EXPENSE** - Means charge incurred for needed products, services and accommodations, including, but not limited to, funeral expenses, mental health, medical care, rehabilitation, rehabilitative occupational training, crime scene cleanup, and other remedial treatment and care.

**10. WORK LOSS** - Means loss of income from work the victim or claimant would have performed in their regular course of employment if the victim had not been injured or died, reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. Individuals filing claims must provide clear and convincing evidence of employment including but not limited to pay stubs, tax returns or certified documentation from employer.

**11. NON-ECONOMIC DETRIMENT** - Means pain, suffering, inconvenience, physical impairment and non-pecuniary damage.

**12. COLLATERAL SOURCE** - Means a source of benefits or advantages for economic loss which the claimant has received, or which is readily available to the claimant including but not limited to any one or more of the following:

- (a) the offender,
- (b) the government of the United States or any agency thereof, in the form of benefits, such as Social Security, Medicare, and Medicaid, or a state or any of its political subdivisions,
- (c) state required temporary non-occupational disability insurance,
- (d) workers' compensation,
- (e) wage continuation programs of any employer,
- (f) proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, or
- (g) a contract providing prepaid hospital and other health care service or benefits for disability.

**13. CATASTROPHIC** - Means injuries involving a sustained loss of function, including but not limited to any of the following conditions: mangled, crushing, or amputation of a major portion of an extremity; traumatic injury to the spinal cord that has caused or may cause paralysis; severe burns that require burn center care; or serious head injury, loss of vision, or loss of hearing.

**14. TOTAL AND PERMANENT DISABILITY** – Means an impairment based upon demonstrable medical evidence that the victim is unable to perform the usual tasks required in his/her employment.

### **Rule No. 3**

#### **TYPES OF COMPENSATION AVAILABLE**

Compensation is available for the following types of expenses:

Economic loss sustained by the victim or a dependent arising from the criminally injurious conduct of another. Future economic loss is also compensable but may be reduced or discontinued if the recipient's circumstances change.

### **Rule No. 4**

#### **MEMBERSHIP AND OFFICERS OF THE BOARD**

The Board shall consist of five (5) members appointed by the Governor to serve four (4) year terms and until the successor is appointed and qualified. At least two (2) members of the Board shall be persons admitted to practice law in this state. At least one (1) member of the board shall be: (A) A victim of criminally injurious conduct; (B) The next of kin of a Homicide victim; or (C) An individual experienced in providing victim assistance services. Of the first members appointed, two (2) shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, and one (1) shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner.

### **Rule No. 5**

#### **PURPOSE OF THE BOARD**

The purpose of the Board shall be to hear and decide all matters relating to Crime Victims Reparations applications. The Board shall have the authority to award compensation to victims of crime for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

**Rule No. 6**

**POWERS AND DUTIES OF THE BOARD**

The Board shall have the power:

1. To hear and determine all matters relating to applications filed with the Arkansas Crime Victim Reparations Board for compensation, including the power to re-investigate or re-open claims without regard to the statutes of limitations.
2. The Board, or the Administrator, on behalf of the Board, may subpoena witnesses, compel their attendance, enter orders, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence. The Board shall be considered in continuous session for the purposes stated above.
3. To regulate its own procedures except as otherwise provided in the Act.
4. To adopt rules and regulations to implement the provisions of the Act.
5. To define any term not defined in the Act.
6. To prescribe forms necessary to carry out the purposes of the Act.
7. To request access to any reports of investigations or other data necessary to assist the Board in making a determination of eligibility for compensation.
8. To publicize the availability of compensation and information regarding the filing of claims therefore.
9. To order the claimant to submit to a mental or physical examination or order the autopsy of a deceased victim if the results would be material to a claim.
10. To require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.
11. To deny, withdraw or reduce an award of compensation upon finding that the claimant did not fully cooperate with the appropriate law enforcement agencies.
12. To reconsider a decision granting or denying a compensation award, based on its own motion or on request of the claimant.
13. To suspend the application for compensation proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but the Board may make a tentative award.
14. To join in a civil action as a part plaintiff to recover the compensation awarded if the claimant brings such action.



15. All necessary and reasonable expenses of the Board shall be paid for from the Crime Victims Reparations Revolving Fund.
16. The Board shall have the duty of preparing and transmitting an annual report to the Governor.

#### **Rule No. 7**

#### **MEETINGS OF THE BOARD**

1. The Board shall meet on the third Thursday of January, March, May, July, September and November - six (6) times each year, or at the call of the Chairperson, at 9:30 a.m. to hear appeal claims.
2. The Chairperson shall serve as presiding officer at all official meetings of the Board. In the absence of the Chairperson, the remaining Board members present at the meeting may designate a president officer for that meeting.
3. The Chairperson shall have the authority to vote on all matters coming before the Board.
4. A majority of the board shall constitute a quorum at hearings on appeal claims. The concurrence of two (2) members of the commission shall be necessary to determine the outcome of a claim. The Board may act in a panel of three (3) with proxies or consent decrees being permitted.
5. In the event of a tie vote the matter or matters shall be continued to the next meeting.
6. The order of business at any meeting of the Board shall follow the agenda prepared in advanced of the meeting. Such other matters may be brought before the Board as shall be requested by any member in writing and presented to the Chairperson.
7. Administrative staff shall be responsible for preparation of minutes for each Board meeting.
8. Roberts Rules of Order, Revised, shall govern all meetings of this Board.

#### **Rule No. 8**

#### **ELIGIBILITY CRITERIA FOR COMPENSATION**

1. The criminally injurious conduct leading to the filing of the reparations claim must have occurred in Arkansas or must have occurred to a resident of Arkansas in a state without a reparations program for which the victim is eligible or to a resident of Arkansas who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.
2. The incident must have occurred on or after July 1, 1988.
3. The incident must have been reported to the proper authorities within 72 hours or would have been reported within the period of time except for good cause.

(A) Good cause shall include, but not be limited to:

- (1) the physical incapacity of a victim,
- (2) the mental incompetence of a victim,
- (3) the age of the victim,
- (4) the injury was not reasonably discoverable.

4. The application for compensation must be filed within one (1) year of the incident, unless the Board finds good cause for failure to file a timely claim.

(A) Good cause shall include, but not be limited to:

- (1) the physical incapacity of a victim,
- (2) the mental incompetence of a victim,
- (3) the age of the victim,
- (4) the injury was not reasonably discoverable,
- (5) restitution or other collateral source was regularly being paid and then terminated,
- (6) postal service delays which are verifiable.

5. The victim must have suffered personal injury or death as a result of the criminal act of another.

6. The claimant and/or victim must to the extent able, have cooperated with law enforcement officials during their investigation.

The following issues may be considered when determining cooperation:

1. Failure to cooperate in the prosecution of the defendant or to appear as a witness.
2. Not cooperating initially but later deciding to cooperate and the delay allows the defendant to escape prosecution.
3. Not cooperating initially but later deciding to cooperate without any good cause as to the delay.
4. Causing extra or unnecessary effort on the part of law enforcement to gain prosecution.
5. Reluctantly providing information pertaining to the crime; failing to appear when requested, without good cause; giving false or misleading information; or attempting to avoid law enforcement.
6. Failing to prosecute or cooperate with law enforcement because of fear for his/her personal safety.
7. Failing to give testimony or otherwise cooperate with the prosecutor's office.
8. Failing to cooperate with Arkansas Crime Victims Reparations Board administrative

staff by not returning requested information, not returning telephone calls, not providing accurate information, etc.

7. The net amount of compensation requested in the application must not have been paid by another source.
8. Reparations may be reduced or diminished to the extent of the degree of responsibility for the cause of the injury or death attributable to the victim. Such responsibility may include, but is not limited to, the victim initiating, provoking, or otherwise contributing to the incident.

The claim may also be denied or diminished if the victim was involved in illegal activity at the time of the incident.

Illegal activity may consist of any of the following but is not limited to:

- (a) victim was buying drugs;
  - (b) victim was using drugs;
  - (c) victim was a minor and drinking alcohol;
  - (d) victim was in an illegal place of business, such as a crackhouse, house of prostitution, or gambling establishment.
9. The injury or death must not have been the result of negligent maintenance or use of a motor vehicle unless the acts are committed with the intent to inflict injury or death or unless the acts committed were in violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq. or A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death.)
  10. An award shall not be made to a claimant/victim who has been convicted of a felony involving criminally injurious conduct.
  11. Awards shall not be made to a victim who is injured or killed while confined in state, county, or municipal jail, prison or other correctional facility as a result of conviction of any crime.
  12. An award shall not unjustly benefit the offender or accomplice except as permitted by Rule 9 of the Arkansas Crime Victims Reparations Rules and Regulations. (See Rule 9)
  13. In those cases where the victim has died, the claimant will be considered to have no compensable loss for the expenses incurred by the victim as a result of the criminally injurious conduct if the claimant has no legal obligation to pay for these expenses.

#### **Rule No. 9**

#### **UNJUST ENRICHMENT**

1. No portion of a compensation award shall unjustly benefit the offender or accomplice. However, no award shall be denied solely on the basis of the victim's familial relationship to the offender or the presence of the offender in the household at the time of the award.

2. In determining whether or not an award would unjustly benefit the offender, the following factors should be considered:
  - a. The legal responsibilities of the offender to the victim and collateral resources available to the victim from the offender. Victims of family violence must not be penalized when collateral sources of payment are not viable.
  - b. Payments to victims of family violence that only minimally or inconsequentially benefit the offender.
  - c. The special needs of child witnesses to violence and child victims of criminal violence, especially when the perpetrator is a parent who may or may not live in the same residence.

### **Rule No. 10**

#### **MAXIMUM COMPENSATION AMOUNTS AND METHODS OF PAYMENTS**

1. Compensation payable to a victim or claimant incurring expenses due to injury or death may not exceed a total of Ten Thousand Dollars (\$10,000.00). However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the maximum reparations amount shall not exceed \$25,000.
2. Compensation for funeral expenses of deceased victims may not exceed \$7,500.
  - a. Collateral sources of income such as burial policies, workers' compensation, etc. will be applied towards the total cost of the victim's funeral.
  - b. Life insurance may not be used as a collateral source when dependents of the deceased victim remain and may benefit from the proceeds of this policy.
  - c. Life insurance will be utilized as a collateral source and be applied against funeral expenses in those cases involving no surviving dependents.
3. The Board may provide for the payment to a claimant in a lump sum or in installments.
4. The Board shall pay all or part of an award directly to service providers unless evidence of prior payment for services is submitted.
5. The Board may also provide for payment of legal fees, not to exceed Two Hundred Fifty Dollars (\$250) - plus filing fees, of a guardianship when an award has been made to a minor child as per Rule 18 of the Arkansas Crime Victims Reparations Board Rules and Regulations.
6. Upon request of the claimant, the Board may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board of either of the following:
  - a. That the award in a lump sum will promote the interests of the claimant;
  - b. That the present value of all future economic loss does not exceed One Thousand Dollars (\$1,000).

7. An award payable in installments for future economic loss may be made only for a period that the Board can reasonably determine future economic loss and may be modified by the Board upon finding that a significant change in circumstances has occurred.
8. Approved claims will be paid in the order of their approval by the Board as funds become available.
9. For victims, as defined in A.C.A. § 16-90-703(2)(B), up to one week of work loss compensation may be eligible provided the following requirements are met:
  - a. the work loss must have been incurred within two weeks of the incident; and
  - b. documentation must be submitted verifying the victim's employment and income at the time of the incident, as well as any employee benefits received.
10. Claimants, as defined in A.C.A. § 16-90-703(4)(A)(ii), shall not be entitled to work loss compensation for wages earned by a deceased victim but not yet paid by the employer. An employer is not relieved of their responsibility to pay wages earned by the victim prior to death; therefore, the wages are not considered a work loss.
11. For claimants, as defined in A.C.A. § 16-90-703(4)(A)(ii), economic loss or future support may be awarded upon verification that the deceased victim provided more than 50% of the claimant's care or support. Awards are subject to diminishment based on benefits recouped from collateral sources.

#### Rule No. 11

#### **GARNISHMENT AND ASSIGNMENT OF AWARD**

1. An award shall not be subject to execution, attachment, garnishment or other process, except that an award for allowable expense shall not be exempt from a claim of a creditor to the extent such creditor has provided products, services or accommodations, the costs of which are included in the award.
2. An assignment by the claimant to any future award is unenforceable, except:
  - a. For work loss to assure payment of court-ordered alimony, maintenance or child support;
  - b. For allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death.

#### Rule No. 12

#### **APPLICATION REVIEW PROCEDURE**

1. A victim, dependent of a victim, or person legally acting in behalf of the victim, must first secure a copy of the official Victims Reparations Application Form from their local prosecuting attorney's office, law enforcement agency, victim/witness coordinator, service provider or from the Board. Assistance in completing the form may be provided by the victim/witness coordinator or the

prosecuting attorney's staff in districts that have no victim/witness coordinator. The Crime Victims Reparations Board staff will also be available to assist in the completion of the form.

2. A form must be completed in its entirety, and accompanied with an itemized statement and police offense report or other official documentation from the agency to which the incident was reported.
3. The staff of the Board shall log the application as being received and begin a thorough review and verification process.
4. The Board and staff have the authority to conduct investigations and/or request any additional information from the victim, the investigating law enforcement agency, medical personnel and/or facilities, witnesses, employers and others as may be deemed necessary for the proper review and verification of the application.
5. The staff shall make a thorough analysis of the application and attachments, then prepare staff comments relative to the application which shall be filed in the application folder along with supportive data that is pertinent to the investigation.
6. Except in cases where a conflict of interest exists as set forth in Rule No. 23, the administrative staff shall have the authority to review and decide crime victim reparations claims up to the maximum allowable amount of Ten Thousand Dollars (\$10,000) or Twenty-five Thousand Dollars (\$25,000) for victims whose injuries are catastrophic and result in a total and permanent disability.
7. The Board shall then make a decision regarding the claim. The claimant/victim shall be mailed notification of the administrative decision within fifteen (15) calendar days by mail. If the claim is denied the claimant/victim will be notified by certified mail, return receipt requested.
8. The claimant shall have the right to appeal the decisions of the Board in the manner set forth in Rule No. 14, APPEALS PROCEDURE.

### **Rule No. 13**

#### **ADVANCE (EMERGENCY) AWARD OF COMPENSATION**

The Board may make or authorize the Administrator to make an advance (emergency) award of compensation to the claimant/victim prior to taking action on an application and pending a final decision when it appears the claim is one for which compensation is probable and undue hardship will result to the claimant/victim if immediate payment is not made. The claimant/victim may request in the application that consideration be given for an advance award and provide justification for such award. A decision denying emergency relief shall not be appealable.

The amount of such advance (emergency) award shall not exceed Five Hundred Dollars (\$500). Any advance award shall be deducted from the final compensation made to the claimant/victim. If the final award amount is less than the amount of the advance award, the claimant/victim must repay the excess to the Board. If an emergency award is made and the claimant/victim later does not follow through with prosecution or some other requirement of this program, the claimant/victim will be required to reimburse the Board for the amount of the award made.

Criteria for payment of emergency awards is listed below:

- a. Claimant/victim is without an income at the time of application resulting in loss of food, heat or shelter.
- b. Claimant/victim can not receive emergency service (i.e. burial) without the emergency payment.

Documentation required:

- a. Proof of financial emergency should be obtained for the file such as notice of eviction from the landlord or a shut-off notice from the power company.
- b. If no proof is available, then the investigator should note in file why he/she thinks the application is considered an emergency.
- c. There must be contact with the investigating law enforcement officer to verify what occurred, the victim's innocence and the victim's cooperation. A law enforcement offense report and Crime Victims Reparations Board Law Enforcement Form must be included in the file.
- d. For wage loss claims, the employer may be contacted by telephone but the written verification must follow to go in the file. If self-employed applicant must provide a copy of his/her last three (3) years tax return or check stubs for the last three (3) months as proof of his/her income. If proof is not available, lost wages can not be considered.
- e. If the injury is not commensurate with the time lost from work, a doctor's excuse will be required.
- f. Claimant/victim is required to sign a promissory (demand) note which must be signed and executed by the claimant/victim with the Administrator prior to receiving the emergency award.

#### **Rule No. 14**

#### **APPEALS PROCEDURE**

1. In the event an application for compensation is approved in a modified form or denied, the administrative staff of the Board shall notify the claimant/victim by certified mail, return receipt requested, within fifteen (15) calendar days setting forth the basis of the decision.
2. The claimant/victim shall have the right to appeal and may do so by notifying the administrative staff of the Board, in writing, of the intent to appeal within forty-five (45) calendar days of the date of the notification letter setting forth administrative staff's decision.
3. The claimant/victim shall then be entitled to a formal hearing before the Board. The hearing shall be held within ninety (90) calendar days of the date of the notice from the claimant/victim stating the intent to appeal.

4. The claimant/victim or an authorized representative, excluding his/her service provider for the claim, in the event the claimant/victim is incapacitated must be present at the appeal hearing. In an appeals hearing, all parties shall be afforded an opportunity to appear and be heard. A record of the proceedings shall be made and shall be transcribed upon request of any party, who shall pay transcription costs unless otherwise ordered by the Board.
5. Notification of Board meetings shall be made in compliance with Arkansas Code Annotated § 25-19-101 - 25-19-107 - the Arkansas Freedom of Information Act.
6. All agendas and supporting documentation necessary shall be mailed to the Board ten (10) calendar days in advance of the Board meeting.
7. The Board may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.
8. The Board shall render its decision relative to the appeal within ten (10) calendar days of the formal hearing and the claimant/victim will be notified by mail.
9. The claimant/victim, if not successful in the appeal to the Board shall then have thirty (30) days from the receipt of the decision to file a petition for judicial review pursuant to Arkansas Code Annotated 25-15-212 in the circuit court of his/her county of residence or in Pulaski County.

#### **Rule No. 15**

#### **SUBROGATION RIGHTS OF THE BOARD**

1. Upon an award of compensation by the Board for personal injury or death, the Board shall be subrogated to recover from a collateral source to the extent reparations were awarded.
2. Should the claimant/victim file a cause of action against any third person responsible for such injury or death, and be entitled to recover the amount of damages sustained by the claimant/victim then the amount recovered and collected in the action is subrogated to the Board for the amount of reparations awarded.
3. In the event a defendant is convicted of a crime and ordered to pay restitution, the office of the Attorney General may seek to recover any or all of the restitution paid. Any excess amount recovered over the reparation amount awarded and paid shall be paid to the claimant/victim.

#### **Rule No. 16**

#### **PENALTY FOR FALSE CLAIMS**

The filing of a false claim for compensation pursuant to the Arkansas Crime Victims Reparations Act shall constitute a Class D Felony. If a victim or a claimant knowingly files a false claim or provides false information or fails to provide material facts or circumstances necessary to substantiate the claim, he/she may not at a later date, file a correct claim. If this happens, the claim shall be denied.



**Rule No. 17**

**BOARD STAFF**

The Administrator of the Board shall be the Chief Executive Officer of the Board staff. He/she shall be hired by the Attorney General with the advice and consent of the Board. He/she shall be responsible for the administration of the rules, regulations, policies and procedures promulgated by the Board, pursuant to the Administrative Procedure Act, and within such restraints as mandated by statute.

The Administrator shall also be responsible for employment, supervision, evaluation and termination of Board employees and shall delegate appropriate powers and duties to them, subject to the advice and/or consent of the Attorney General and the Board.

**Rule No. 18**

**CLAIMS OF INCOMPETENTS OF MINOR CHILDREN**

Proof of the establishment of the guardianship may be required in applicable cases.

**Rule No. 19**

**AMENDMENT TO RULES AND REGULATIONS**

Any modification or amendment to the Rules and Regulations of the Board shall be made pursuant to the procedure as outlined in the Arkansas Administrative Procedure Act.

**Rule No. 20**

**ELIGIBILITY REQUIREMENTS AND APPLICATION REVIEW  
PROCEDURE FOR THE SEXUAL ASSAULT REIMBURSEMENT PROGRAM**

**DEFINITIONS**

“Victim” means any person who has been a victim of any alleged sexual assault or incest.

“Appropriate emergency medical-legal examinations” means health care delivered with emphasis on the collection of evidence for the purpose of prosecution and shall include, but not be limited to:

1. The appropriate components contained in an evidence collection kit for sexual assault examinations distributed by the Forensic Biology Section of the State Crime Laboratory;

“Medical facility” means any health care provider that is currently licensed by the Department of Health and providing emergency services, and all publicly owned or tax-supported medical facilities in Arkansas.

“Licensed health care provider” means a person licensed in a health care field who conducts medical-legal examinations.

## **PROCEDURES GOVERNING MEDICAL TREATMENT ADULT VICTIMS**

1. All medical facilities in Arkansas or licensed health care providers conducting medical-legal examinations shall adhere to the procedures set forth below in the event that a person presents himself or is presented for treatment as a victim of rape, attempted rape, any other type of sexual assault, or incest.
2. Any adult victim presented for medical treatment shall make the decision of whether or not the incident will be reported to a law enforcement agency.
  - a. No medical facility or licensed health care provider may require an adult victim to report the incident in order to receive medical treatment.
  - b. Evidence will be collected only with the permission of the victim. However, permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.
3. Should an adult victim wish to report the incident to a law enforcement agency, the medical facility, licensed health care provider, or his designee shall contact the appropriate law enforcement agencies.
  - a. The victim shall be given a medical screening examination by a qualified medical person as provided under the Emergency Medical Treatment and Active Labor Act, as in effect on January 1, 2001. If the victim arrives at the emergency department of a hospital, the person shall be examined, treated and any injuries requiring medical attention will be treated in the standard manner and a medical-legal examination shall be conducted and specimens shall be collected for evidence.
  - b. If a law enforcement agency has been contacted and with the permission of the victim, the evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

## **PROCEDURES GOVERNING MEDICAL TREATMENT OF MINOR VICTIMS**

1. All medical facilities in Arkansas shall adhere to the procedures set forth below in the event that a person under the age of eighteen (18) presents himself/herself or is presented at the medical facility for treatment as a victim of rape, attempted rape, any other type of sexual assault, or incest.
2. The reporting medical facility or licensed health care provider conducting the medical-legal examination should follow the procedures set forth in A.C.A. §12-12-507 regarding the reporting of child maltreatment.
3. Any victim under the age of eighteen (18) years of age shall be examined and treated and any injury requiring medical attention will be treated in the standard manner.
4. A medical-legal examination shall be performed and specimens shall be collected for evidence.
5. The evidence shall be turned over to the law enforcement officers when they arrive to assume responsibility for investigation of the incident.

## **PROCEDURES APPLICABLE TO BOTH ADULT AND MINOR VICTIMS TRANSFERS**

The victim shall not be transferred to another medical facility unless:

- a. The victim or the parents or guardian of a victim under the age of eighteen (18) requests to be transferred, or
- b. A physician or other qualified medical personnel when a physician is not available has signed a certification that the benefits to the patient's health would outweigh the risks to the patient's health as a result of the transfer, and
- c. The transferring medical facility or licensed health care provider provides all necessary medical records and insures that appropriate transportation is available.

## **EXAMINATIONS AND TREATMENT -- PAYMENTS**

1. All licensed emergency departments shall provide prompt, appropriate emergency medical-legal examinations for sexual assault victims.
2. All victims shall be exempted from the payment of expenses incurred as a result of receiving a medical-legal examination provided the following conditions are met:
  - a. The assault must be reported to a law enforcement agency, and
  - b. The victim must receive the medical-legal examination within seventy two hours of the attack.
  - c. The the seventy 72 hour time limitation may be waived, if the victim is a minor or if the Arkansas Crime Victims Reparations Board finds that good cause exists for the failure to provide the exam within the required time.
3. A medical facility or licensed health care provider that performs a medical-legal examination shall submit a sexual assault reimbursement form and an itemized statement which meets the requirements of 45 C.F. R. 164.512(d), as it existed on January 2, 2001, directly to the Arkansas Crime Victims Reparations Board for payment.
4. The medical facility or licensed health care provider shall not submit any remaining balance after reimbursement by the Arkansas Crime Victims Reparations Board to the victim.
5. Acceptance of payment of the expenses of the medical-legal examination by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection.

## **REIMBURSEMENT OF ALL MEDICAL FACILITIES**

1. The Arkansas Crime Victims Reparations Board may reimburse any medical facility or licensed health care provider for reasonable and customary costs of performing a medical-legal examinations for sexual assault victims. The Board may mandate cost ceilings for claims and determine reasonable cost.
2. Medical facilities must be currently licensed by the Department of Health and providing emergency services.

3. Medical facilities and licensed health care providers are responsible for fulfillment of the following procedures since reimbursement is made directly to them:
  - a. Claims will be paid only if submitted on Arkansas Crime Victims Reparations Board Sexual Assault Reimbursement Forms.
  - b. The medical facility must send the reimbursement form with the attached itemized bills to the Arkansas Crime Victims Reparations Board.
4. Acceptance of payment for services paid by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection. The medical facility or licensed health care provider to whom the award is made will be notified that by accepting the approved payment, they are agreeing not to commence civil actions against the victim or his/her legal representative to recover any balance due under the bill.
5. The victim shall not be responsible for the payment of the cost of the medical-legal examination. A medical facility or licensed health care provider shall not submit any remaining balance after reimbursement by this Board to the victim.

**Rule No. 21**

**COST CEILING ON MEDICAL BILLS**

In connection with claims for payment on medical bills, not covered by insurance, made by victims, the Board will award up to 65% of medical bills, not to exceed a total reimbursement of \$10,000. However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the total reimbursement shall not exceed \$25,000.

The provider of medical services to whom the award is made will be notified that by accepting the payment of 65% of their bill, they are agreeing not to commence civil actions against the victim or his legal representative to recover the balance due under the bill.

Acceptance of payment for services paid by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection.

**Rule No. 22**

**COST CEILING ON MENTAL HEALTH BILLS**

1. In connection with claims for payment of mental health services, not covered by insurance, incurred by victims, the Board will pay a maximum of Thirty-five Hundred Dollars (\$3500) for out-patient services provided the services are conducted by a licensed mental health professional who has a signed contract on file with the Board. Additionally, the Board may pay a maximum of Thirty-five Hundred Dollars (\$3500) for in-patient or other intensive services that are provided by a licensed mental health care facility. The term mental health professional shall be limited to psychiatrists, psychologists, psychological examiners, professional

counselors (LPC), certified social workers (LCSW), masters level social workers (LMSW) under the supervision of a LCSW, associate counselors (LAC) under the supervision of a LPC, or marriage and family therapists (LMFT).

Fees for specified mental health services, based on the current usual and customary rate, shall be set by the board and reviewed annually.

The following documentation must be submitted before payment of mental health expenses can be considered:

- a. A treatment plan stating the basis for the necessity of such treatment, the anticipated extent of the treatment, and the relationship of the treatment to the crime perpetrated upon the victim and whether or not the diagnosis is related to a pre-existing condition.
  - b. Copies of original, individual diagnostic case notes or other approved documentation summarizing the victim's therapeutic issues and progress.
  - c. An itemized statement.
2. The victim or claimant may submit a request for a waiver of the \$3500 maximum if further services are required. The maximum may be waived only upon justification of special need based on the following documentation:
- a. A detailed statement and new treatment plan submitted by the provider justifying the continued need for treatment and its continued relationship to the crime.
3. The Board reserves the right to have any mental health claims and treatment plans reviewed by an independent peer review committee should it so desire.

### **Rule No. 23**

#### **CONFLICT OF INTEREST**

No member of the Board shall use such appointment for purposes which are motivated by private gain, including gain for providers, claimants, or victims with which the board member is associated within any capacity. There shall exist a conflict of interest when a provider, claimant, or victim with whom the board member is associated with appears before the board in the course of business of the board.

When such a conflict arises for a member, the individual member should declare the conflict. Additionally, any member of the Board who questions whether or not another member has a conflict of interest in the matter under discussion may ask for a determination by the Board. If the Board finds that a conflict exists, the affected member shall also follow the aforementioned procedure.

Any member of the Board who declares a conflict of interest, or who is found to have a conflict, should neither participate in debate nor vote on the issue in question.

A conflict of interest shall exist among members of the administrative staff in any case where a member of the Attorney General's staff or a person related, whether by blood, adoption, or marriage within the second degree

of consanguinity to a member of the Attorney General's staff is the claimant or victim on a claim for compensation.

Additionally, the administrator of the Board and the staff attorney may determine that a conflict of interest exists on claims where one or more members of the administrative staff know the claimant or victim.

Administrative staff members shall immediately notify the administrator when another member of the Attorney General's staff or someone whom they believe is known by one or more members of the administrative staff has filed a claim.

In the event that a conflict arises or exists among all members of the administrative staff, the Board shall make the initial determination regarding the eligibility of the claim. The administrative staff may gather the necessary information and present the application and attachments to the Board, but shall not participate in the debate, nor vote on the claim in question.

The administrative staff shall also immediately notify the administrator when such staff member knows the victim or claimant on a particular claim.

If only one staff member is determined to have a conflict, then that staff member shall not participate in the debate, nor vote on the claim in question. If that staff member has been assigned to investigate the claim, then the administrator shall immediately re-assign the claim to another investigator.

#### **Rule No. 24**

#### **SUPPLEMENTAL AWARDS**

If at the time of the application, the victim or claimant was unable to submit all of the itemized bills, he/she may submit supplemental bills to be considered after the original award. If a victim or claimant has been awarded their original claim at a reduced amount due to contribution, then the Board will note at the time of approval whether or not they will consider any supplemental awards concerning this claim. If the Board determines that supplemental awards will not be considered after the initial award, the Board shall so note at the time of the initial award. Each case will be considered on its own merits.

The total of the original award and any and all supplemental awards may not exceed \$10,000.

Supplemental awards may be paid quarterly.

Supplemental bills will be considered only if submitted within one year of:

- a. the date of treatment, or
- b. notification of payment or denial by a collateral source.

**Rule No. 25**

**FINANCIAL OBLIGATION REQUIREMENT**

Reparations shall not be awarded to any victim/claimant who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the board receives information or materials establishing to the satisfaction of the board that the financial obligation has been satisfied. Such financial obligation includes parole and probation fees.