

# TITLE 185. CRIME VICTIMS COMPENSATION BOARD

**Chapter**

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## CHAPTER 1. ADMINISTRATIVE OPERATIONS

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[Authority: 21 O.S., §§ 142.1 through 142.18; 75 O.S., §§ 302 and 307]  
 [Source: Codified 6-13-91]

### 185:1-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O. S. 250 et seq. This Chapter was adopted in order for crime victims to be aware of their rights when filing a claim with the Oklahoma Crime Victims Compensation Board, hereinafter referred to as the Board.

### 185:1-1-2. Official office

The official office of the Oklahoma Crime Victims Compensation Board is located in the offices of the Oklahoma District Attorneys Council.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94]

### 185:1-1-3. Membership and officers of the Board

The Board shall consist of three (3) members who shall be appointed by the Governor with the advice and consent of the Senate. The first members appointed were appointed for terms of two (2), three (3) and four (4) years, while members appointed thereafter were and will be appointed to four-year (4-year) terms and until the successor is appointed and qualified. At least one member of the Board shall be licensed to practice law in Oklahoma. The Chairperson of the Board shall be elected by the Board as a whole on an annual basis. The new Chairperson's responsibilities shall begin October 1 of each year. Members of the Board shall receive such compensation,

subsistence allowances, mileage and expenses as provided by the State Travel Reimbursement Act.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Amended at 19 Ok Reg 2640, eff 7-25-02]

### 185:1-1-4. Powers and duties of the Board and Administrator

The Board or administrator shall have the duty to award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met. The Administrator of the Crime Victim Compensation Board may determine initial victims' claims and any victim's claim under ten thousand dollars (\$10,000.00). The Board may delegate any other victims' claim to the administration of the Crime Victims Compensation Board at their discretion. The claimant shall have the right to appeal to the Board for any claim in dispute. The Board shall have the power:

- (1) To hear and determine all matters relating to claims for compensation of ten thousand dollars (\$10,000.00) or more and may hear claims under ten thousand dollars (\$10,000.00). The Board or administrator shall be able to reinvestigate or re-open claims without regard to statutes of limitation. However, claims that have been inactive for a period of more than three (3) years from the date of the last action by the Board or administrator shall be deemed closed and any further action forever barred. Claim files may be destroyed by the district attorneys council and or the local district attorney's office after a claim is closed. Claims which have been declined may be destroyed after

nine (9) months, following the last Board or administrative action, provided the claimant has not notified the Board staff of any intentions to request reconsideration of the claim.

- (2) To subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence.
- (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 have access to any reports of investigations or other data necessary to assist the Board or administrator in making a determination of eligibility for compensation.
- (8) To publicize the availability of compensation and information regarding the filing of claims.
- (9) To order the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.
- (10) To deny, withdraw or reduce an award of compensation upon finding that the claimant did not fully cooperate with the appropriate law enforcement agencies.
- (11) To reconsider a decision granting or denying a compensation award, based on its own motion or on request of the claimant, providing such motion is not made after three years from the last action by the Board on a claim.
- (12) To continue claims for compensation pending disposition of a criminal prosecution that has been commenced or is imminent, but the Board may make a tentative award.
- (13) To join in civil action as a party plaintiff to recover the compensation awarded if the claimant brings such action.
- (14) And the duty to prepare and transmit an annual report to the Governor, the Speaker of the House and the President Pro Tempore of the Senate.
- (15) To determine whether costs of services rendered are reasonable.
- (16) The Board and administrator shall also have such other powers and duties as provided by Statute.
- (17) To take judicial notice of general, technical, and scientific facts.
- (18) In certain cases wherein mental health expenses are being claimed, the Board or Administrator may request assistance from a panel of professionals in the mental health field. The panel of professionals may only act in an advisory capacity to the Board.
- (19) The Board or administrator shall have the authority to set limits of compensation on any medical or mental health treatment, and require that providers of medical or

mental health treatments be licensed prior to compensating for said treatment.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Amended at 19 Ok Reg 2640, eff 7-25-02; Amended at 22 Ok Reg 1062, eff 5-26-05; Amended at 25 Ok Reg 1899, eff 6-26-08]

#### **185:1-1-5. Meetings of the Board**

- (a) The Board shall meet in compliance with the Open Meeting Act.
- (b) 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 presiding officer for that meeting.
- (c) The Chairperson shall have the authority to vote on all matters coming before the Board.
- (d) A quorum shall consist of two (2) members.
- (e) In the event of a tie vote when only two members of the Board are conducting business, the matter or matters shall be continued to the next meeting.
- (f) The order of business at any meeting of the Board shall follow the agenda prepared in advance 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.
- (g) Proxies to vote shall not be permitted at the Board meetings.
- (h) The Administrator of the Board shall keep the Board apprised of all relevant matters and shall seek its advice as deemed necessary.
- (i) Roberts Rules of Order, Revised, shall govern all meetings of the Board.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94]

#### **185:1-1-6. Board staff**

The Board shall be provided such office, support, staff and secretarial services as necessary by the District Attorneys Council.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94]

#### **185:1-1-7. 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 Oklahoma Administrative Procedure Act.

#### **185:1-1-8. Opportunity to appear before the Board**

(a) Pursuant to Title 21 O.S. 1981 Supp. Secs. 142.1 through 142.18 of the Oklahoma Statutes, any claimant may be represented by licensed counsel, or may represent him/herself before the Board, for any claim of \$10,000.00 or more, under the following circumstances:

- (1) at the discretion of the claimant to provide support for a claim filed with the Board for compensation; or,
- (2) at the request of the Board to provide testimony relative to a claim filed for compensation.

(b) A claimant and/or counsel shall have the opportunity to appear before the Board and shall be so notified no less than fourteen (14) days in advance of the Board meeting in which his/her claim is to be considered. If the claimant and/or counsel wish to appear before the Board to support the claim, the following procedure will be utilized by the claimant:

- (1) Complete the Invitation to Appear form which notifies the claimant of the date, time and place of the meeting in which the Board will consider his/her claim.
- (2) Mail the complete Invitation to Appear form at least three (3) days prior to the scheduled meeting, to the Oklahoma Crime Victims Compensation Board. If subpoenas are requested, the claimant should follow procedures set forth in 185:1-1-13.
- (3) If the Board has not received the completed Invitation to Appear form at least three (3) days prior to the scheduled meeting, it shall be assumed that the claimant or counsel does not wish to and will not appear before the Board to provide support for his/her claim.
- (4) It is not mandatory that a claimant or counsel appear before the Board in order for a claim to be considered unless specifically so ordered by the Board.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Amended at 22 Ok Reg 1062, eff 5-26-05; Amended at 25 Ok Reg 1899, eff 6-26-08]

#### 185:1-1-9. Order to appear before the Board

(a) If the Board wishes to have any person appear personally before it, and/or furnish records or other evidence, the Board will comply with the following procedure:

- (1) Execute a subpoena signed by the Chairperson or Administrator, stating date, time and place of the Board meeting and requested records wherein consideration will be given to the claim filed by the claimant.
- (2) Mail the subpoena by certified mail, return receipt requested, ten (10) days in advance of meeting wherein attendance is required or obtain personal service of the subpoena within five (5) days.
- (3) Should the person under subpoena be unable to comply with the terms of the subpoena, it shall be the responsibility of that person to so notify the Administrator either by mail or phone at least three (3) days prior to said meeting of the reason of inability to attend or produce records.
- (4) It shall then be the responsibility of the Board to either:

- (A) continue consideration of the claim to the next regularly scheduled meeting or,
- (B) to consider the claim without the appearance of the person or records subpoenaed.

(b) In certain cases, the failure of a claimant to appear before the Board when subpoenaed, may be considered failure to cooperate in the claim investigation and the claim may be denied, withdrawn, or reduced accordingly by the Board.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Amended at 25 Ok Reg 1899, eff 6-26-08]

#### 185:1-1-10. Appearance relative to an appeal

If a claimant and/or counsel wish to personally appear before the Board with regard to an appeal of a claim that has been reduced or denied, the claimant must comply with the following procedure:

- (1) Follow explicitly the appeals procedure as written in 185:10-1-10.
- (2) Once the meeting date is set in a contested case (appeal) and the claimant so notified, the claimant shall have the responsibility of notifying the Administrator in writing at least five (5) days prior to the scheduled meeting if unable to attend and the reason.
- (3) If a claimant and/or counsel wish to attend and are unable to do so, the hearing will be rescheduled for another meeting of the Board.
- (4) When consideration of a claim has been rescheduled and the claimant and/or counsel is unable to attend such rescheduled meeting, the Board may consider the appeal on the records and any other additional evidence available.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94]

#### 185:1-1-11. Recording, transcribing and transcripts

Under all circumstances, the Board proceedings will be recorded. If any person requires a transcription of the proceedings, they shall comply with the following procedures:

- (1) Notify the Administrator, in writing, within thirty (30) calendar days after the hearing for which transcription is requested.
- (2) In the case of an appeal, state in the letter of appeal to the Board that a record or transcript is requested. The number of transcripts requested and to whom they should be mailed should also be stated.
- (3) The responsibility for payment for transcribing and transcript copies is that of the requesting individual unless otherwise so ordered by the Board.
- (4) The cost for such transcribing and transcript copies shall be determined by the Board.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Amended at 19 Ok Reg 2640, eff 7-25-02]

#### 185:1-1-12. Testimony of witness

If the claimant wishes to present testimony of others in support of his/her claim, the claimant shall comply with the following procedure:

- (1) Complete appropriate information on Invitation to Appear form including names and addresses of witnesses, telephone numbers, and nature of testimony.
- (2) In an appeal of a Board decision, the witnesses' names, addresses, telephone numbers and nature of testimony must be included in the letter from the claimant stating his/her desire to appeal.

**185:1-1-13. Subpoena of witnesses and/or records and documents**

If the claimant wishes to have the Board issue subpoenas on his/her behalf either at the time of the initial Board consideration of the claim or at the time of appeal, the claimant shall:

- (1) Indicate on the Invitation to Appear form that you wish to have witnesses subpoenaed on your behalf.
- (2) In an appeal, the claimant must state whether he/she wishes the Board to subpoena any witnesses. In order to preserve the Victims Compensation Revolving Fund for its intended use, the Board will not be responsible for paying witness fees.
- (3) If the claimant requests subpoenas be issued to witnesses, it will be the responsibility of the requesting party to deliver the subpoenas. If witnesses are unable to appear, it shall be the decision of the claimant as to whether or not the claim is considered as scheduled, or passed to the next regular meeting.
- (4) In order to allow sufficient time for the Board to issue subpoenas and for service to be obtained on the witness, the claimant must deliver the completed request for a subpoena to the Board office no later than seven (7) working days prior to the hearing or appeal.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94]

**185:1-1-14. Initial Board consideration**

Any Board member may question the claimant and claimant's witnesses at any time during the hearing. The Board may also limit the time for witnesses testimony and or discussion. The procedure for claim consideration and Board decision will be as follows:

- (1) Chairperson announces the claim to be considered.
- (2) The Administrative Staff or Victim-Witness Coordinator answers any questions the Board may have relative to the facts of the case.
- (3) Claimant and/or counsel presents testimony (if present).

- (4) Board questions claimant and/or counsel.
- (5) Claimant and/or counsel presents witnesses (if present).
- (6) Board questions witnesses.
- (7) The Board goes into executive session, as necessary, for discussion of confidential information.
- (8) Board renders decision.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Amended at 22 Ok Reg 1062, eff 5-26-05]

**185:1-1-15. Claims review and appellant procedures [REVOKED]**

[Source: Revoked at 22 Ok Reg 1062, eff 5-26-05]

**185:1-1-16. Filing of support statements**

If a claimant wishes to file a written statement regarding a claim, which was not attached to the claim submitted to the Board, the claimant's name and claim number shall be written at the top, right hand corner of each page and submitted to the Administrator at least ten (10) days prior to the Board meeting wherein the claim is to be considered.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Amended at 22 Ok Reg 1062, eff 5-26-05]

**185:1-1-17. Claimant notification of Board decision**

Claimants will be mailed a decision and order within twenty (20) calendar days of the meeting wherein the decision is rendered.

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Amended at 22 Ok Reg 1062, eff 5-26-05]

**APPENDIX A. INVITATION TO APPEAR [REVOKED]**

[Source: Amended at 11 Ok Reg 1153, eff 2-28-94; Revoked at 19 Ok Reg 2640, eff 7-25-02]

**APPENDIX B. SUBPOENA [REVOKED]**

[Source: Revoked at 19 Ok Reg 2640, eff 7-25-02]

**APPENDIX C. SUBPOENA DUCES TECUM [REVOKED]**

[Source: Revoked at 19 Ok Reg 2640, eff 7-25-02]



## CHAPTER 10. CRIME VICTIMS COMPENSATION PROGRAM

<b>Section</b>	
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185:10-1-14.	Life insurance as a collateral source [REVOKED]
185:10-1-15.	Prorating expenses

[Authority: 21 O.S., §§ 142.1 through 142.18]  
 [Source: Codified 6-13-91]

### 185:10-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S. 250 et seq. The purpose of the Board shall be to hear and decide matters relating to the Crime Victims Compensation claims. The Board or administrator shall 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.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94; Amended at 22 Ok Reg 1064, eff 5-26-05]

### 185:10-1-2. Title of the Act

The title of the Act under which the rules of this Chapter are being promulgated is known as the Oklahoma Crime Victims Compensation Act, hereinafter referred to as the Act. It is codified in the Oklahoma Statutes as Title 21 O.S. 142.1 et seq. as amended.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94]

### 185:10-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Allowable expenses" means:

- (A) charges incurred for needed products, services and accommodations, including, but not limited to, medical care, wage loss, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.
- (B) any reasonable expenses related to funeral, cremation or burial, up to the statutory limit.

- (C) reasonable costs for counseling family members of a homicide victim, and
- (D) reasonable costs associated with homicide crime scene clean up.
- (E) reasonable cost of vehicle impound fees associated with the collection and security of crime scene evidence.

"Board" means the Oklahoma Crime Victims Compensation Board, hereinafter referred to as the Board.

"Claimant" means any of the following persons applying for compensation 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 Board has the discretion to require sufficient proof of authority to act on behalf of a victim.

"Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this Act which the claimant has received, or which is readily available to the claimant from the sources identified by statute.

"Criminally injurious conduct" means a misdemeanor or felony which occurs or is attempted in Oklahoma, or against a resident of this state in a state that does not have an eligible crime victims compensation program, as such term is defined in the Federal Victims of Crime Act of 1984, Public Law 98-473; that results in bodily injury, threat of bodily injury or death to a victim.

- (A) "Criminally injurious conduct" results in personal injury or death to a victim which is:
  - (i) punishable by fine, imprisonment or death, or

(ii) if the act is committed by a child, could result in such child being adjudicated a delinquent child.

(B) Pursuant to 21 O.S. 142.11, an award may be made whether or not any person is prosecuted or convicted as an adult offender or adjudicated a delinquent child. Proof of conviction of a person whose acts give rise to a claim or a copy of the adjudication order for a delinquent child whose acts give rise to a claim is conclusive evidence that the crime was committed. The Board or administrator may continue a claim pending disposition of a criminal prosecution or delinquent child adjudication that has been commenced or is imminent, but may make a tentative award.

(C) The term "criminally injurious conduct" shall not include acts arising out of the negligent maintenance or use of a motor vehicle unless the vehicle was:

- (i) operated or driven by the offender while under the influence of alcohol, with a blood alcohol level in excess of the legal limit, or any other intoxicating substance or,
- (ii) operated or driven by the offender with the intent to injure or kill the victim or,
- (iii) operated in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person or the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact.
- (iv) one or more vehicles that results in the death of the victim due to the reckless disregard for the safety of others by the offender. As used in this division, reckless disregard for the safety of others is defined as the omission to do something which a reasonably careful person would do, or the lack of the usual and ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

(D) The term "criminally injurious conduct" shall include an act of terrorism, as defined in Section 2331 of Title 18, United States Code, committed outside the United States.

"**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.

"**Economic loss**" means monetary detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, economic loss and replacement services loss of a dependent, but shall not include non economic loss.

"**Economic loss of a dependent**" means loss after death of the victim of contributions of things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury.

"**Non-economic detriment**" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

"**Replacement services loss**" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for the benefit of self or family, if the victim had not been injured or died.

"**Replacement services loss of a dependent**" means the loss reasonably incurred by dependents after death of the victim in obtaining ordinary and necessary services in lieu of those the deceased victim would have performed for their benefit had the deceased victim not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim and not subtracted in calculating the economic loss of the dependent.

"**Victim**" means a person victimized within the State of Oklahoma who suffers personal injury or death as a result of criminally injurious conduct and shall include a resident of this state who is injured or killed by an act of terrorism committed outside the United States.

"**Work loss**" means loss of income from work the victim would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake, or loss of income from work the victim's caregiver would have performed if the injuries of the victim sustained as a result of criminally injurious conduct had not created the need for the caregiver to miss work to care for the injured victim.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94; Amended at 19 Ok Reg 2646, eff 7-25-02; Amended at 22 Ok Reg 1064, eff 5-26-05; Amended at 25 Ok Reg 1900, eff 6-26-08]

#### 185:10-1-4. Eligibility criteria for compensation

(a) The criminally injurious conduct leading to the filing of the compensation claim must have occurred in Oklahoma. Beginning November 1, 1989, residents of Oklahoma who are victimized in states without eligible crime victims compensation programs, as such term is defined in the federal Victims of Crime Act of 1984, Public Law 98-473, will be eligible claimants under the Oklahoma Crime Victims Compensation Act. Proof of conviction of the person causing the criminally injurious injury to the victim is conclusive evidence that the crime was committed.

(b) The incident must have occurred on or after October 19, 1981.

(c) The incident must have been reported to law enforcement officials within 72 hours or would have been reported within the period of time except for good cause shown. In claims wherein the victim is under the age of eighteen (18), the crime resulting in the claim must have been reported to authorities

within seventy-two (72) hours after disclosure to a responsible adult except for good cause shown. This shall also apply to persons who are diagnosed as mentally handicapped.

(d) The claim for compensation must be filed in the Oklahoma City office within one (1) year of the incident date or death of the victim. The Board may, at its discretion, waive this requirement, if the Board finds there was good cause for failure to file the claim within one (1) year, but in no event shall the filing of a claim be permitted after two (2) years from the date of injury or death upon which the claim is based. The good cause exception shall be permitted only for injury or death occurring on or after November 1, 1989. If the victim is mentally handicapped, or is a child under eighteen (18) years of age, the Board may use the date the criminal incident was disclosed to a responsible adult when establishing whether or not the claim was timely filed. The Board may, at its discretion, extend the filing deadline beyond two (2) years in child sexual assault cases.

(e) The victim must have suffered physical or psychological injury or death as a result of the criminal action of another.

(f) The claimant and/or victim must have cooperated with law enforcement officials, the District Attorneys office, and the Crime Victims Compensation Board during entire investigation. In the event the Board or administrator finds the claimant and/or victim was not cooperative, a claim may be denied, withdrawn, or reduced.

(g) The net amount of compensation requested in the claim must not have been paid by a collateral source, however, the Board or administrator shall not require any claimant to seek or accept any collateral source contribution, unless the claimant was receiving such benefits prior to the occurrence giving rise to the claim under the provisions of the Act.

(h) The claimant and/or victim was not the offender or an accomplice of the offender, and, the compensation award shall not be used to benefit the offender or accomplice. Number one through four below were developed in accordance with Section 7129 of the Victims of Crime Act.

(1) In determining whether a compensation award can be made without unjustly enriching an offender, the Board or administrator shall evaluate whether the victim has reported the crime and is cooperating with the criminal justice system in the investigation and prosecution of the crime, and whether the victim will do what is possible to prevent access by the offender to compensation paid to the victim. If the victim is cooperating fully, and if the offender will not benefit from or have access to a substantial portion of any cash award made by the Board to the victim, then the award shall not be declined on the basis that the award would benefit the offender.

(2) A determination that the award would benefit the offender shall not be based solely on the presence of the offender in the household at the time of the award. The presence of the offender in the household is only one factor to be considered in determining that he/she would benefit from the award; a determination of whether the offender will benefit from an award shall be made in each case, based on the totality of the circumstances.

(3) In determining whether an award would benefit the offender, the Board must weigh whether the benefit to the offender is substantial or in-consequential. Factors to be considered include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his/her living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award may not be reduced or denied.

(4) Collateral resources available to the victim from the offender shall be examined. Collateral resources may include court-ordered restitution, an offending spouse's medical insurance, or other resources of the offender available to cover the victim's expenses. In evaluating the availability of collateral resources, a determination shall be made first as to whether the offender has a legal responsibility to pay; second, whether the offender has resources to pay; and third, whether payment is likely. The victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery. If the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impedes payment of insurance that may be available to cover a spouse's or child's expenses, the Board will attempt to meet the victim's needs to the extent allowed, and may pursue whatever actions are appropriate to seek reimbursement from the offender. The Board is subrogated to any restitution the offender may owe the victim if an award is made.

(i) The claim must not have been the result of negligent maintenance or use of a motor vehicle by the offender, unless the vehicle was operated or driven by the offender while under the influence of alcohol or any other intoxicating substance or, unless the vehicle was operated or driven by the offender with the intent to injure or kill the victim or in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person or the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact.

(j) Compensation may be diminished or denied to the extent or degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the Board or administrator. Compensation may also be diminished or denied if the Board or administrator finds that the victim was legally intoxicated or under the influence of a controlled dangerous substance (CDS), and the victim's intoxicated state contributed to his/her injury or death. Any person over the age of 18, injured while voluntarily riding with a legally intoxicated driver or someone under the influence of a CDS, may be found to have contributed to his/her injury or death, provided there is

evidence that the victim knew of the drivers intoxicated state prior to the injury.

(k) the offense involving one or more vehicles results in the death of the victim due to the reckless disregard for the safety of others by the offender. As used in this division, reckless disregard for the safety of others is defined as the omission to do something which a reasonably careful person would do, or the lack of the usual and ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94; Amended at 19 Ok Reg 2646, eff 7-25-02; Amended at 22 Ok Reg 1064, eff 5-26-05; Amended at 25 Ok Reg 1900, eff 6-26-08]

### **185:10-1-5. Types of compensation available**

Compensation is available for economic loss sustained by a victim or dependent arising from criminally injurious conduct of another. Economic loss would include: Allowable expenses (i.e. medical, psychiatric, dental, optical, rehabilitation; work loss, caregiver work loss, replacement services loss; and, if injury causes death, expenses related to burial or cremation, homicide crime scene clean up, economic loss and replacement services loss of a dependent, vehicle impound fees. Future economic loss is also compensable but may be reduced or discontinued if recipients circumstances change. Compensation is limited to the amounts set forth by Statute.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94; Amended at 19 Ok Reg 2646, eff 7-25-02; Amended at 25 Ok Reg 1900, eff 6-26-08]

### **185:10-1-6. Maximum compensation amounts and methods of payment**

(a) Compensation payable to a victim or claimant sustaining economic loss due to injury or death may not exceed the statutory limit.

(b) Compensation for work loss, replacement services loss, dependents economic loss and dependents replacement services loss may not exceed the statutory limit.

(c) The Board or administrator may provide for the payment to a claimant in a lump sum or in installments.

(d) Upon request of the claimant, the Board or administrator may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board, or administrator that the award in a lump sum will promote the interest of the claimant.

(e) 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 provided there is a finding that a significant change in circumstances has occurred.

(f) The Board may review claims in the order in which they appear on the docket. Claim payments will be made in the same manner. Once the Crime Victims Compensation Fund has been depleted, all remaining claims on the docket may be continued and placed on the next docket when funds become available.

(g) Mental health treatment for the victim is a compensable loss. The Board may, at any time, refer a claim to the Mental Health Review Panel for review and advice regarding length

and relevance of treatment being provided, and whether the treatment was as a direct result of the crime. Panel members agree to provide this service to the Board at no cost. Panel members may create documents to assist them in their review of the claims with the guidance and support of the Victims Compensation division staff. After the Mental Health Review Panel reports their findings, the claim will be set on a future Board docket for review and decision.

(h) When a person files a claim, all health care providers that have been given notice of a pending claim, shall refrain from all debt collection activities relating to medical treatment received by the person in connection with such claim until an award is made on the claim or until a claim is determined to be noncompensable pursuant to the provisions of this act. The statute of limitations for collection of such debt shall be tolled during the period in which the applicable health care provider is required to refrain from debt collection activities under this subsection. For the purposes of this section, debt collection activities means repeatedly calling or writing to the claimant and threatening either to turn the matter over to a debt collection agency or to an attorney for collection, enforcement, or filing of other process. The term shall not include routine billing about the status of the claim. This requirement will pertain to all claims pending and all claims filed after the time of the enactment of 21 OS 142.9 H.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94; Amended at 22 Ok Reg 1064, eff 5-26-05; Amended at 25 Ok Reg 1900, eff 6-26-08]

### **185:10-1-7. Garnishment and assignment of award**

(a) An award shall not be subject to execution, attachment, garnishment or other process, except for child support and further, 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.

(b) An assignment by the claimant to any future award is unenforceable, except:

(1) For work loss to assure payment of court-ordered alimony, maintenance or child support; or

(2) For allowable expense to the extent that the benefits are for the cost of products, services or accommodations necessitated by the injury or death.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94]

### **185:10-1-8. Application review procedure**

(a) A victim, dependent of a victim, or person legally acting on behalf of the victim, must first secure a copy of the Official Victims Compensation Claim Form. In the event assistance is needed by the claimant in completing the form, such assistance will be provided by the victim-witness coordinator, or by the staff located at the District Attorneys Council in Oklahoma City.

(b) A claim form must be completed, signed and received at the District Attorneys Council within one (1) year of the incident date or death of the victim. If the Board or administrator

finds good cause for failure to file the claim within one (1) year, the filing period may be extended up to, but not exceeding, two (2) years, beginning with incidents occurring on or after November 1, 1989. In child sexual assault cases, the Board may at its discretion, extend the filing deadline beyond two (2) years.

(c) The victims compensation staff shall log the claim form as being received and forward it to the victim-witness coordinator in the district where the crime occurred. Upon completion, the claim shall be returned to the Oklahoma City office for processing.

(d) The Board, victim-witness coordinators, and staff have the authority to conduct investigations and/or request any additional information from the victim and/or claimant, 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 claim.

(e) The staff shall make a thorough analysis of the claim once it is completed and received from the victim-witness coordinator.

(f) Once the claim has been reviewed (staff review and summary completed), the claim will be placed on the next appropriate Board or administrative docket for consideration. A claim must be reviewed at least fifteen (15) calendar days prior to a Board meeting for consideration at that meeting. Those claims not reviewed fifteen (15) calendar days prior to a regular meeting shall be considered at the next scheduled Board meeting. New claims will be reviewed by the staff in the order in which the completed claims are received in the Oklahoma City office.

(g) Agendas and supporting material shall be mailed to the Board no less than ten (10) calendar days in advance of the Board meeting.

(h) Notification of Board meetings shall be filed with the Secretary of State in accordance with the Open Meeting Law. Copies of the meeting agendas giving date, location and time of meetings shall be posted in conspicuous places on the premises of the building wherein the Board meetings will be held and/or at offices of the Crime Victims Compensation Board. Claimants whose compensation claims are to be considered by the Board will be mailed notification of the meeting no less than fourteen (14) calendar days in advance and will have the opportunity to appear and be heard, and to offer evidence and argument on any issue relevant to the claim.

(i) Once a decision is made by the Board, the claimant shall be mailed notification of the decision within twenty (20) days.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94; Amended at 19 Ok Reg 2646, eff 7-25-02; Amended at 22 Ok Reg 1064, eff 5-26-05; Amended at 25 Ok Reg 1900, eff 6-26-08]

**185:10-1-9. Advance (emergency) award of compensation**

In the event a claimant requests advance claim consideration or requests an emergency award, the Administrator shall review said request and determine, based on the evidence of hardship so written and described, whether or not the claim shall be expedited and placed on the next Board docket. If

the claim is expedited, the Board may review the claim for an emergency award, provided that elements of eligibility appear met, and out-of-pocket loss is verified. The decision of the Administrator as to whether or not a claim is expedited for Board review is not appealable. Notice requirements may be waived with written consent of the claimant.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94]

**185:10-1-10. Appeals procedure**

(a) In the event a claim for compensation is denied, the Crime Victims Compensation Board staff shall notify the claimant by mail, within twenty (20) days.

(b) The claimant shall have the right to appeal and may do so by notifying the Crime Victims Compensation Board Administrator, in writing, of the intent to appeal within thirty (30) calendar days of the date of the notification letter setting forth the Board or administrative decision.

(c) If the claimant is not satisfied with the decision, he/she shall then be entitled to a hearing before the Board. The hearing shall be held within one hundred twenty (120) calendar days of the date of the notice from the claimant stating intent to appeal.

(d) 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. Transcription requests must be made within sixty (60) days of proceeding.

(e) The Board may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.

(f) The Board shall render its decision in writing, relative to the appeal within twenty (20) calendar days of the hearing.

(g) In the event the claimant remains dissatisfied with the decision of the Board subsequent to the appeals hearing, the claimant may file a petition with the District Court of Oklahoma County or in the county wherein the claimant currently resides.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94. Amended at 22 Ok Reg 1064, eff 5-26-05]

**185:10-1-11. Subrogation rights of the Board**

Upon an award of compensation by the Board or administrator, the Board shall be subrogated to the rights of the claimant to the extent of the award.

[Source: Amended at 11 Ok Reg 1157, eff 2-28-94. Amended at 19 Ok Reg 2646, eff 7-25-02. Amended at 22 Ok Reg 1064, eff 5-26-05]

**185:10-1-12. Penalty for false claims**

The filing of a false claim for compensation pursuant to the Oklahoma Crime Victims Compensation Act shall constitute a misdemeanor, and shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

**185:10-1-13. Establishment of guardianship for minor children [REVOKED]**

[Source: Revoked at 11 Ok Reg 1157, eff 2-28-94]

**185:10-1-14. Life insurance as a collateral source [REVOKED]**

[Source: Added at 11 Ok Reg 1157, eff 2-28-94; Revoked at 22 Ok Reg 1064, eff 5-26-05]

**185:10-1-15. Prorating expenses**

In the event the expenses submitted by the claimant exceed the maximum allowable award, the Board may or may not prorate an award evenly.

[Source: Added at 11 Ok Reg 1157, eff 2-28-94]

## CHAPTER 15. SEXUAL ASSAULT EXAMINATION FUND

### Section

- 185:15-1-1. Purpose
- 185:15-1-2. Definitions
- 185:15-1-3. Application by victim
- 185:15-1-4. Duties of the physician or qualified registered nurse
- 185:15-1-5. Duties of the District Attorney [REVOKED]
- 185:15-1-6. Insurance
- 185:15-1-7. Limitation of payment by the fund
- Appendix A. Official Application for Sexual Assault Examination Payment [REVOKED]

[Authority: 21 O.S., §§ 142.19 and 142.20]

[Source: Codified 6-13-91]

### 185:15-1-1. Purpose

The purpose of the Sexual Assault Examination Fund is to provide the victim of sexual assault with a forensic medical examination for the procurement of evidence to aid in the investigation and prosecution of a sexual assault offense and to provide to the victim medications as directed by the medical authority conducting the examination. Medications provided to the victim by the medical authority conducting the examination may only be provided to said victim on a one-time initial basis for the immediate trauma and medical examination of said victim. In no event shall payment from the Sexual Assault Examination Fund exceed the statutory maximum. The effective date of the Act authorizing the Sexual Assault Examination Fund was July 1, 1981.

[Source: Amended at 9 Ok Reg 3301, eff 8-15-92]

### 185:15-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Fund" means the Sexual Assault Examination Fund as established in Title 21 of the Oklahoma Statutes, Sections 142.19 and 142.20.

"Qualified Registered Nurse" To be considered qualified to perform a forensic sexual assault examination and receive payment through the Sexual Assault Examination Fund, Registered Nurses must be registered with the State Board of Nurse Registration and receive at least 40 hours of in-service training in the field of forensic evidence collection and rape trauma.

"Sexual assault" means:

- (A) rape or rape by instrumentation, as defined in Title 21 of the Oklahoma Statutes; or
- (B) forcible sodomy, as defined in Title 21 of the Oklahoma Statutes.

"Sexual assault forensic examination" means procedures performed by a physician or a Qualified Registered Nurse to collect from the body of the victim, evidence of the sexual assault. This may include vaginal swabbing, vaginal wash, taking of blood samples, pubic combing, and any other

procedures requested by the investigating law enforcement agency to obtain evidence of the crime of sexual assault.

[Source: Amended at 9 Ok Reg 3301, eff 8-15-92; Amended at 19 Ok Reg 2649, eff 7-25-02; Amended at 22 Ok Reg 1069, eff 5-26-05]

### 185:15-1-3. Application by victim

(a) In order to be eligible for payment by the fund for expenses of a sexual assault forensic examination, the victim of the crime must sign, prior to the examination, the portion of the Official Sexual Assault Examination Application provided by the Oklahoma Crime Victims Compensation Board. If the victim is under the age of 18, or under the supervision of a legal guardian, the parent or guardian of the victim must sign the application form.

(b) The victim's application must be accompanied by a copy of an itemized statement from the medical facility where the examination was conducted and/or from the Physician or Qualified Registered Nurse, if applicable.

(c) Should medications be prescribed by the medical authority conducting the sexual assault examination, a receipt will be required prior to reimbursement of said medication. Medication fees may be included in the hospital bill, providing the medication was dispensed at the hospital.

[Source: Amended at 9 Ok Reg 3301, eff 8-15-92; Amended at 19 Ok Reg 2649, eff 7-25-02; Amended at 22 Ok Reg 1069, eff 5-26-05]

### 185:15-1-4. Duties of the physician or qualified registered nurse

(a) The physician or qualified registered nurse who conducts the forensic examination of the victim must complete and sign the portion of the Official Application for Sexual Assault Examination Payment designated "Examining Physician or Qualified Registered Nurse."

(b) The physician or qualified registered nurse is responsible for collecting the evidence in a professional manner and preserving the evidence for shipment to a law enforcement forensic laboratory in the manner designated by the law enforcement officer in charge of investigating the sexual assault of the victim.

[Source: Amended at 9 Ok Reg 3301, eff 8-15-92; Amended at 19 Ok Reg 2649, eff 7-25-02; Amended at 22 Ok Reg 1069, eff 5-26-05]

**185:15-1-5. Duties of the District Attorney  
[REVOKED]**

[Source: Amended at 9 Ok Reg 3301, eff 8-15-92; Amended at 19 Ok Reg 2649, eff 7-25-02; Amended at 22 Ok Reg 1069, eff 5-26-05; Revoked at 25 Ok Reg 1904, eff 6-26-08]

**185:15-1-6. Insurance**

- (a) The payment of a sexual assault examination will be made, regardless of whether the victim is medically insured.
- (b) In order to provide anonymity to the sexual assault victim and maintain confidentiality, any victim who has obtained a forensic sexual assault examination, will not be required to provide information to the Board relative to employment or insurance; and, shall not be required to file a claim with any private insurance company for the payment of a forensic sexual assault examination.
- (c) If the victim or claimant chooses to file an insurance claim for the sexual assault examination, reimbursement should be made to the Sexual Assault Examination Fund upon payment from the insurance company.
- (d) For sexual assault exams performed on adults and children, Medicaid or any other federally funded program is

considered a collateral source and payment will not be made unless the denial of benefits is provided.

[Source: Amended at 9 Ok Reg 3301, eff 8-15-92; Amended at 22 Ok Reg 1069, eff 5-26-05; Amended at 25 Ok Reg 1904, eff 6-26-08]

**185:15-1-7. Limitation of payment by the fund**

- (a) In all cases, the maximum payment by the fund for any one forensic sexual assault examination shall not exceed the statutory maximum.
- (b) Payments from the Fund shall be made directly to the medical facility where the examination was performed.
- (c) Under no circumstances shall the Fund make any payment for the expenses of medical treatment of the victim, or for any other expense other than the expense of the forensic sexual assault examination, unless authorized by statute.
- (d) In the event there is a fee from the physician or a qualified registered nurse, as well as a bill from the hospital, the statutory maximum shall be prorated between both service providers if both bills are submitted at the same time.

[Source: Amended at 9 Ok Reg 3301, eff 8-15-92; Amended at 22 Ok Reg 1069, eff 5-26-05]