

**RULES AND REGULATIONS PERTAINING TO THE
CRIME VICTIM COMPENSATION PROGRAM**

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
OFFICE OF THE GENERAL TREASURER**

2001

INTRODUCTION

These Rules and Regulations pertaining to the Crime Victim Compensation Program are promulgated pursuant to R.I.G.L. section 12-25-18(b) and are established for the purpose of effectuating the provisions and overall purpose of the Criminal Injuries Compensation Act of 1972, the Criminal Injuries Act of 1996, and the 1999 amendments to the Criminal Injuries Compensation Act of 1996.

In accordance with the provisions of section 42-35-3(c) of the General Laws of Rhode Island, in the development of the regulations, consideration was given to: (1) alternative approaches to the regulations; (2) duplication or overlap with other state regulations; and (3) any significant economic impact on small business as defined in chapter 42-35 of the General Laws. Based on the available information, no known alternative approach, duplication or overlap was identified. The health, safety, and welfare of the public overrides any economic impact which may be incurred from these proposed regulations.

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1.00: CRIME VICTIM COMPENSATION PROGRAM

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Section 1.01: Purpose

The General Treasurer of Rhode Island promulgates these regulations related to financial compensation for victims of violent crime pursuant to the authority under R.I.G.L. section 12-25-18(b).

Section 1.02: Scope

These regulations apply to applications for financial compensation filed under R.I.G.L. sections 12-25-1 et. seq.

Section 1.03: Definitions

- (1) Administrator: the program administrator of the 1996 act, and the 1999 amendments to the Criminal Injuries Compensation Act of 1996, who issues notices of award or denial pursuant to R.I.G.L. section 12-25-18. The Administrator is charged with the duty of and granted the power to effectuate the provisions and overall purpose of the Criminal Injuries Compensation Act of 1972, the Criminal Injuries Act of 1996, and the 1999 amendments to the Criminal Injuries Compensation Act of 1996 in an efficient and equitable manner.
- (2) Application: an application for compensation under R.I.G.L. sections 12-25-16 et. seq. on an application form provided by the office as in effect from time to time.
- (3) Applicant: a person who files an application for compensation under R.I.G.L. sections 12-25-16 et. seq. An application may be filed by a person eligible for compensation as defined in Section 1.05, or by a parent or legal guardian of any such person.
- (4) Child: any unmarried person who is under eighteen (18) years of age and includes a stepchild or an adopted child.
- (5) Court: Superior Court.

- (6) Crime: an act committed by a person which, if committed by a mentally competent, criminally responsible adult who has no legal exemption or defense, would constitute a crime; provided, however, that such act involves the application of force or violence or the threat of force or violence by the offender upon the victim, resulting in physical or psychological injury to the victim.
- (a) The word crime shall include any of the offenses specified in R.I.G.L. section 12-25-20 inclusive, any violation of any provision of R.I.G.L. sections 31-27-1 through 31-27-2.2, inclusive, and any violation of R.I.G.L. section 31-27-2.6, and any conduct that would constitute a violation of R.I.G.L. section 15-15-3.
 - (b) The word crime shall apply to an act committed against any person within the physical confines of Rhode Island or within the maritime jurisdiction of the state of Rhode Island, including land subject to federal jurisdiction.
 - (c) The word crime shall also apply to an act which occurs against a resident of Rhode Island in a state which does not have a crime victim compensation program of any kind. If a Rhode Island resident is injured or killed outside of the state of Rhode Island, the victim first must apply for compensation in the state, possession, territory or district of the United States in which the offense occurred. In the event that a Rhode Island resident is denied compensation in the state, possession, territory or district of the United States in which the offense occurred, he/she may apply for compensation with the office in accordance with the provisions of the 1999 amendments to the Criminal Injuries Compensation Act of 1996.
 - (d) The word crime shall also apply to an act of terrorism as defined in section 2331 of title 18, United States Code that occurs outside the State of Rhode Island to any victim who had his or her residence in this state at the time the offense occurred who is injured or killed by an act of terrorism occurring either outside of the United States, as defined in 18 U.S.C. § 2331, or within the United States as referred to in 42 U.S.C. § 10603b.
 - (e) The word crime does not include death by suicide.
- (7) Dependent: a person wholly or partially dependent upon the income of the victim at the time of his or her death or would have been so dependent but for the incapacity due to the injury from which the death resulted and shall include a child of the victim born after the death of the victim. The paternity of a child born after the death of the victim must have been established by a court of competent jurisdiction and the child's birth registered pursuant to R.I.G.L. section 23-3-10 or R.I.G.L. section 23-3-15.
- (8) Minor: a person under the age of eighteen (18) years old.
- (9) Offender: an adult or juvenile who commits the crime for which the applicant seeks compensation.
- (10) Office: the Crime Victim Compensation Program within the Office of the General Treasurer for the State of Rhode Island, as established pursuant to R.I.G.L. sections 12-25-1 et. seq.

- (11) Pecuniary loss: actual, out-of-pocket medical expenses (including psychiatric care), hospital expenses, loss of past earnings, and loss of future earnings because of a disability incurred as a result of personal injury to the victim, for which the victim is not compensated by an other source. In the case of a claim for loss of future earnings, the applicant must demonstrate that he/she is disabled from performing any gainful employment. In the case of a death, funeral and burial expenses for which the victim's estate is not compensated by any other source, and loss of support to the dependents of the victim for which the dependents are not compensated by any other source.
- (12) Personal injury: actual physical bodily harm, or mental or nervous shock, and a pregnancy resulting from a sexual attack.
- (13) Relative: a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, and a spouse's parents.
- (14) Resident: any person who has his or her residence within the state of Rhode Island.
- (15) State: the District of Columbia, the fifty (50) states, the Commonwealth of Puerto Rico, and the United States' territories and possessions.
- (16) Treasurer: the General Treasurer of the State of Rhode Island or his or her designee.
- (17) Victim: a victim is either:
- (a) a person who is an involuntary participant in a criminal act or totally unaware that he or she is a potential participant in a crime, who suffers personal physical or psychological injury or death by any act of a person or persons as a result of:
 - (1) any of the offenses specified in R.I.G.L. section 12-25-20;
 - (2) which act occurs within the physical confines of the state of Rhode Island; or
 - (3) which act occurs within the maritime jurisdiction of the state of Rhode Island; or
 - (b) a resident of the state of Rhode Island who is a victim of an act of terrorism as defined in section 2331 of title 18, United States Code, occurring outside the United States or within the United States as referred to in 42 U.S.C. § 10603b.
- (18) Violent felonious criminal conduct: criminally injurious conduct, which, if proven beyond a reasonable doubt, would constitute a felony under the laws of the state of Rhode Island, any other state, or the United States, and includes those crimes specified in R.I.G.L. section 12-25-20 as follows:
- (a) Assault with intent to commit murder, robbery, or rape;
 - (b) Assault with a dangerous weapon;

- (c) Assault and battery;
 - (d) Mayhem;
 - (e) Indecent assault and battery on a child under thirteen (13) years of age;
 - (f) Arson or statutory burning;
 - (g) Kidnapping;
 - (h) Robbery or larceny from that person;
 - (i) Murder;
 - (j) Manslaughter;
 - (k) First or second degree sexual assault;
 - (l) Child molestation, 1st or 2nd degree;
 - (m) Driving under the influence of alcohol or drugs;
 - (n) Refusal by a driver to submit to a chemical test for alcohol or drugs in immediate aftermath of a collision;
 - (o) Driving so as to endanger, resulting in death, pursuant to section 31-27-1; and
 - (p) Driving so as to endanger, resulting in personal injury, pursuant to section 31-27-1.
 - (q) Failure to stop by a driver in circumstances which result in the death of any person, pursuant to § 31-26-1;
 - (r) Any other crime excluding motor vehicle offenses other than those enumerated in this section, which results in personal injury of death.
- (19) 1972 Act: the Criminal Injuries Compensation Act of 1972, established pursuant to sections 12-25-1 through 12-25-15.
- (20) 1996 Act: the Criminal Injuries Compensation Act of 1996, and the 1999 amendments to the Criminal Injuries Compensation Act of 1996, established pursuant to sections 12-25-16 through 12-25-31.

Section 1.04: Transition Rules

- (1) New cases filed on or after the effective date of the 1996 act, August 21, 1996, or on or after the effective date of the 1999 amendments to the Criminal Injuries Compensation Act of 1996, September 1, 1999, shall do so through the Criminal Injuries Act of 1996, as amended, established pursuant to sections 12-25-16 through 12-25-31.

- (2) All claimants with cases filed pursuant to the 1972 act awaiting decisions from the court shall have the option of transferring their cases to the 1996 act at any time prior to receiving a decision on their case from the court under the 1972 act. Any request for transfer to the 1996 act shall be final and irrevocable. No victim shall be permitted to have claims pending under both the 1972 and 1996 acts for the same incident.
- (3) Claims shall be paid in the chronological order in which decisions are made under either the 1972 or 1996 acts or the 1999 amendments to the Criminal Injuries Compensation Act of 1996. Claims filed under the 1972 act shall be paid according to the date the judgment is ordered by the court and claims filed under the 1996 act or the 1999 amendments to the Criminal Injuries Compensation Act of 1996, shall be paid according to the date a final decision is reached on the claim. In either case, whether the claim for compensation was filed under the 1972 act, the 1996 act or the 1999 amendments to the Criminal Injuries Compensation Act of 1996, each claim shall be paid in chronological order according to the date of the original judgment or the date of the original decision, notwithstanding any request for reconsideration or appeal. The office shall stay payment on any original judgment or original decision pending the outcome of a request for reconsideration or appeal.
- (4) Those claimants who filed claims prior to August 21, 1996, and voluntarily transfer their claims to the 1996 act shall abide by all the provisions of the 1996 act, with the following exceptions:
 - (a) They shall be eligible for attorney fees as provided for in the 1972 act, pursuant to section 12-25-8. The basis for determining attorneys' fees shall be the amount which would be awarded to the victim under the 1996 act. The amount of compensation for attorney fees shall not exceed fifteen (15%) of the total amount awarded to the claimant, or two thousand (\$2,000), whichever is less.
 - (b) The requirement that the action for compensation be commenced within one (1) year after the date of personal injury or death is extended to three (3) years, and shall be considered satisfied as long as the requirement was met in the original filing for compensation under the 1972 act.
 - (c) The requirement that no compensation be awarded for an injury or death resulting from a crime which was not reported to the appropriate law enforcement authority within three (3) days of its occurrence is extended to ten (10) days of its occurrence.
- (5) Those claimants with claims currently pending under the 1972 or 1996 acts or whose claims arose under the 1972 or 1996 acts but have not yet filed, may voluntarily transfer or file their claims in the first instance under the program established pursuant to the 1999 amendments to the Criminal Injuries Compensation Act of 1996. Those claimants as referenced herein shall abide by and be subject to all the provisions of the program established pursuant to the 1999 amendments to the Criminal Injuries Compensation Act of 1996. Any claimant transferring his/her claim under the 1972 act shall be required to dismiss his/her action pending in the Superior Court and file an application for compensation under R.I.G.L. sections 12-25-16 et. seq. on an application form provided by the office as in effect from time to

time.

- (6) The administrator shall have the discretion to pay claims out of chronological order when:
- (a) the applicant, victim, party or entity entitled to compensation from the fund has agreed to receive a reduced payment in return for expedited payment; or
 - (b) where the administrator finds that the applicant has demonstrated compelling circumstances to warrant expedited payment of an award or a portion thereof. The administrator shall set forth, in writing, the reasons for expediting payment in these situations.

Section 1.05: Persons Eligible for Compensation

- (1) Persons Eligible: The following persons are eligible for compensation:
- (a) victims as defined in Section 1.03(17);
 - (b) dependents and relatives of a victim who dies as a direct result of violent crime as provided in R.I.G.L. 12-25-19(b)(3);
 - (c) parent, spouse, minor sibling, or minor child of a victim who dies as a direct result of a violent crime as provided in R.I.G.L. section 12-25-21(c);
 - (d) legal guardians of the victim;
 - (e) child advocate as provided in R.I.G.L. section 42-73-9.1; and
 - (f) legal representatives of the victim's estate in the case of the victim's death.
- (2) Persons Ineligible: The following persons are ineligible for compensation:
- (a) applicant attempting to derive rights from a person who was not an eligible victim pursuant to R.I.G.L. sections 12-25-1 et. seq.;
 - (b) persons injured while serving time in any federal, state, county or city jail, prison, correctional facility or criminal institution;
 - (c) persons injured during the performance of their duty whose occupations inherently entail high risk hazards. Such occupations include, but are not limited to, police officers, correctional officers, security guards, and firefighters.

Section 1.06: Eligibility Requirements

A person eligible for compensation must satisfy each of the following conditions:

- (1) Timely Filing of Application: An application for compensation pursuant to the 1996 act must be filed within one (1) year after the date of the personal injury or death of the victim if the personal injury or death occurred prior to September 1, 1999. An

application for compensation pursuant to the 1999 amendments to the Criminal Injuries Compensation Act of 1996 must be filed within three (3) years after the date of the personal injury or death of the victim if the personal injury or death occurred on or after September 1, 1999. The filing period shall commence on the date the crime was committed, except in the following circumstances;

- (a) If the victim was a minor when the crime was committed and the crime did not result in the death of the minor, that is, the victim suffered personal injury, the filing period shall not commence until the victim reaches the age of eighteen. For applications based on the personal injury of a minor victim, the application must be filed within one year after the date on which the minor victim reaches the age of eighteen if the personal injury occurred between August 21, 1996 and August 31, 1999. If the personal injury to the minor victim occurred on or after September 1, 1999, then the application must be filed within three years after the date on which the minor victim reaches the age of eighteen. For applications based on the death of a minor victim, the application must be filed within one year after the date of death of the minor, if the death occurred between August 21, 1996 and August 31, 1999, or within three years after the date of death of the minor if the death occurred on or after September 1, 1999;
 - (b) If the applicant did not discover the act which constitutes a crime until more than one year after the crime was committed, the filing period shall not commence until the applicant discovered or, in exercise of reasonable diligence, should have discovered, the act which constitutes a crime, provided, however, that in such cases, the crime for which the applicant seeks compensation must have resulted in the issuance of a criminal complaint, indictment or criminal information, or other judicial determination of probable cause that an act constituting a crime occurred;
 - (c) office may allow an application for compensation to be filed with the office after the expiration of the statute of limitations if the victim was of unsound mind or for good cause shown. Delay resulting from the lack of knowledge of the filing requirements of R.I.G.L. section 12-25-1, et seq. shall not constitute good cause.
 - (d) If more than one of the exceptions described in Section 1.06(1) applies, the application may be filed within the longest time period permitted by Section 1.06(1).
- (2) Reporting of Crime to Law Enforcement: An applicant must demonstrate that the crime for which he/she seeks compensation was reported to police or other appropriate law enforcement authorities, or to an agency or entity obligated by law to report complaints of criminal misconduct to law enforcement authorities.
- (a) Appropriate law enforcement authorities to whom a crime may be reported include: federal, state or local police; school, college or university police.
 - (b) Crimes involving minor victims may be reported to the Department of Children, Youth and Families pursuant to the reporting requirements of

R.I.G.L. sections 40-11-3 and 40-11-3.1. All other crimes must be reported to law enforcement authorities specified in Section 1.06(2)(a) or (c).

- (c) The reporting of a crime to a court through a citizen application for a restraining order under R.I.G.L. section 15-15-3 accompanied by an affidavit in support of the application for protection, or through a citizen application for a criminal complaint, shall constitute a report to law enforcement authorities.
 - (d) Reports to private security personnel, rape crisis centers, rescue personnel, or the Crime Victim Compensation Program do not constitute reports to law enforcement authorities.
- (3) Timeliness of Report to Law Enforcement Authorities: An applicant must demonstrate that the crime was reported within ten (10) days of its occurrence except where the administrator finds good cause for delay.
- (a) A crime is reported within ten days of its occurrence if it is reported within ten days of when the crime was discovered, or reasonably should have been discovered.
 - (b) Good cause for delay shall include, but not be limited to, delay caused by physical or psychological incapacity which prevented the making of a report; or by reasonable fear of retaliation by the offender or others.
 - (c) Delay resulting from a belief that law enforcement authorities will not investigate the crime, or delay resulting from lack of knowledge that an award under R.I.G.L. section 12-25-1 et. seq. is contingent upon reporting the crime to law enforcement authorities, does not constitute good cause for delay.
 - (d) A finding of good cause for delay does not excuse the reporting requirement which must be satisfied as a condition of receiving compensation.
- (4) Cooperation with Law Enforcement: A victim must cooperate with the reasonable requests of law enforcement agencies and personnel in the investigation and prosecution of the crime.
- (a) Victim's obligations: Cooperation with law enforcement agencies and personnel includes reporting the crime to law enforcement authorities; assisting in identifying the suspect; and complying with all reasonable requests of law enforcement agencies and personnel for information and assistance. Cooperation with law enforcement shall also include applying for the issuance of a criminal complaint in circumstances in which police did not witness the incident and have no right of arrest, provided that in such circumstance, police records clearly demonstrate that the victim was advised of his right to apply for the issuance of a criminal complaint.

Section 1.07: Compensable Expenses

The following expenses are compensable in accordance with the following requirements:

(1) General Requirements:

- (a) No compensation shall be awarded in excess of twenty-five thousand dollars (\$25,000) plus any attorney fees awarded pursuant to a successful request for reconsideration to the treasurer or treasurer's designee or pursuant to a successful appeal to the superior court. If two or more applicants are eligible for compensation arising out of a crime committed against one victim for the same crime, their applications shall be joined under one application for compensation and each applicant shall be entitled to receive compensation to the extent of out-of-pocket loss and in proportion to the out-of-pocket loss of every other applicant, but in no event shall the total compensation exceed the maximum allowable under the statute.
- (b) In determining the amount of the award, the administrator, pursuant to the authority under R.I.G.L. section 12-25-18(b) to promulgate all rules and regulations to effectuate the provisions and overall purpose of the 1972 and 1996 acts and the 1999 amendments to the Criminal Injuries Compensation Act of 1996, shall take into consideration the rates and amounts payable for injuries and death under other statutes of this state and of the United States, and the amount of revenue in the violent crimes indemnity account and the number and nature of claims pending against it.
- (c) Fund of Last Resort: The Criminal Injuries Compensation Act is a fund of last resort. An applicant must demonstrate that his/her compensable losses or legal liability exceed reimbursements or eligibility for reimbursement or compensation from any other collateral resource including, but not limited to, all resources and sources of payment or reimbursement listed in Section 1.10(2)(e) and R.I.G.L. section 12-25-23(b). Awards for compensation shall be reduced by all amounts reimbursed, reimbursable or otherwise compensable by any other source. No third party which has provided any compensation to an applicant shall have any claims against the office or the Program or to the funds awarded to the applicant pursuant to R.I.G.L. section 12-25-24.
- (d) Elderly Victims: The administrator will make every effort to accelerate decisions on awards for compensation and payments on applications filed by victims over the age of sixty (60).
- (e) Order of Payments: Applications shall be paid in the chronological order in which decisions are made.
- (f) Reopening: An application for compensation may be reopened or the administrator may issue a supplemental award for additional medical expenses, including psychiatric care and mental health counseling expenses, and lost earnings, provided that the applicant provides proper documentation that the additional expenses have been actually and reasonably incurred as a direct result of the personal injury. The administrator shall issue a supplemental award as long as the total award does not exceed the maximum award allowable under this statute.
- (g) The administrator may issue an award for expenses related to psychiatric care and mental health counseling for a parent, spouse, minor sibling or child of a victim who dies as a direct result of a violent crime, provided

that the parent, spouse, minor sibling or minor child provides proper documentation that the psychiatric care and mental health counseling have been actually and reasonably incurred as a direct result of the death of the victim.

(h) Property losses are not compensable expenses.

(i) No interest shall be included in or added to an award for compensation.

(2) Medical Expenses: A victim shall be eligible for compensation for reasonable medical care obtained as a result of the crime.

(a) Compensation for medical expenses is limited to services, supplies and equipment that are medically necessary and reasonably incurred as a direct result of the crime. Compensation shall not be awarded for unrelated conditions or services, or for preexisting conditions except to the extent they were exacerbated by the crime. Compensation shall not be awarded on the basis of an estimate of services to be rendered. However, where the medical provider requires pre-authorization for payments for medical treatment, the administrator may authorize payment for those medical services upon a showing by the medical provider that:

1. the medical services to be rendered are related to the crime for which an application for compensation was filed with the office; and
2. the medical services are reasonable and necessary to correct the injury to the victim; and
3. the fees and costs associated with the proposed medical services are reasonable and in conjunction with R.I.G.L. section 12-25-19 (h).

In addition, compensation shall not be awarded for photocopying of medical records or for the writing of medical reports.

(b) The applicant must demonstrate an actual out-of-pocket loss or legal liability for payment of compensable medical expenses which are not reimbursed or reimbursable by any other source. In order to make this demonstration, the applicant must:

- (1) if the victim is covered by a private insurance provider, submit all bills for payment to the insurance provide;
- (2) exhaust all other sources of public reimbursement including, but not limited to, Medicaid, Medicare, workers' compensation, social security, veterans benefits, community free service, charity care, free care or uncompensated care;
- (3) comply with all reasonable requests by the office to secure information and verifications necessary to investigate the application.

(c) Upon request by the office, medical providers shall cooperate with the office in the investigation of applications for compensation and are required to:

- (1) verify that the services rendered are medically necessary and reasonably incurred as a direct result of the crime. Where medical services or therapy extend beyond six months or 30 sessions (whichever is greater), the office may, as a condition of further payment, require current verification that the services are medically necessary and reasonably incurred as a direct result of the crime;
 - (2) provide current billing and balance information, including information about amounts covered by insurance, public benefits or other sources, and current information about any amounts paid and by whom;
 - (3) certify whether the services rendered are reimbursable by Medicaid or any other public or private insurance source, including, but not limited to, community free service, charity care, free care or uncompensated care;
 - (4) in the case of hospitals, assist the applicant in applying for community free service, charity care, free care or uncompensated care.
- (d) All medical providers must be licensed by the Rhode Island Board of Medical Licensure and Discipline or an equivalent state licensing authority, or must be certified by the recognized national certification body for that profession.
- (e) The administrator may authorize an award for outstanding medical expenses payable directly to the medical provider, but only if the provider has fully cooperated with the office in the investigation of the claim. Otherwise, awards shall be made payable solely to the applicant.
- (f) Where compensable medical services have been rendered, any award made payable to the medical provider or jointly to the applicant and the medical provider shall be based on the current final adjustment to charge ratio approved by the Department of Labor and Training pursuant to R.I.G.L. section 28-33-1 et seq. and applied by the Rhode Island Workers' Compensation Unit in establishing payout ratios for inpatient charges, emergency room charges, and ambulatory surgery charges. Amounts for all other medical services shall be based on the current Rhode Island Workers' Compensation Medical Fee Schedule. If the provider employs a sliding scale fee structure for any category of patient service, the award shall not exceed the amount the applicant would be charged if he/she qualified under the provider's sliding scale fee structure.
- (g) Any medical provider that receives payment from the Office of the General Treasurer for medical services, supplies or equipment pursuant to an award under R.I.G.L. section 12-25-16 et. seq. shall, as a condition of the receipt of such payment, accept such payment as discharging in full any and all obligations of the victim or applicant to pay, reimburse or compensate the provider for medical services, supplies of equipment, that have been reimbursed under this section. By accepting payment as referenced herein, said medical provider shall be prohibited from assessing any additional charges against the victim or applicant.

- (h) In making determinations regarding applications for medical expenses, the administrator may obtain an advisory opinion of a review panel consisting of members of the medical community.

(3) Mental Health counseling: A victim shall be eligible for compensation for reasonable and necessary mental health counseling and psychiatric care expenses that have been actually and reasonably incurred as a direct result of the crime. A parent, spouse, minor sibling or minor child of a victim who dies as a direct result of a violent crime shall be eligible for compensation for reasonable and necessary mental health counseling and psychiatric care expenses that have been actually and reasonably incurred as a direct result of the death of the victim. Compensation shall not be awarded for treatment of unrelated conditions, or for preexisting conditions to the extent they were exacerbated by the crime. Compensation shall not be awarded on the basis of an estimate of services to be rendered. However, where the mental health provider requires pre-authorization for payments for mental health counseling or psychiatric care, the administrator may authorize payment for such mental health counseling or psychiatric care upon a showing by the mental health provider that:

1. the mental health counseling or psychiatric care to be rendered is related to the crime for which an application for compensation was filed with the office; and
 2. the mental health counseling or psychiatric care is reasonable and necessary to correct the injury to the victim; and
 3. the fees and costs associated with the proposed mental health counseling or psychiatric care is reasonable and in conjunction with R.I.G.L. section 12-25-19 (h).
- (a) Upon request of the administrator, the treating mental health provider must submit a mental health treatment plan on a form prescribed by the office. If mental health treatment extends beyond six months or 30 sessions (whichever is greater), the administrator may require, as a condition of further payment, the submission of a current, updated mental health treatment plan by the mental health provider.
- (b) All mental health providers must be registered or certified with, or licensed by, or under the direct supervision of a person who is registered or certified with, or licensed by either the Rhode Island Board of Medical Licensure and Discipline, the Rhode Island Board of Registration of Social Workers, the Rhode Island Board of Psychology, or the Rhode Island Department of Health as a Mental Health Counselor or a Therapist in Marriage or Family Practice, or by an equivalent state licensing authority.
- (c) In making determinations regarding applications for mental health counseling or psychiatric care, the administrator may obtain an advisory opinion of a peer review panel consisting of volunteer members of the mental health provider community.
- (d) The office shall compensate mental health counseling or psychiatric care expenses based on reasonable rates charged by a mental health provider. If the

mental health provider employs a sliding scale fee structure for any category of client, patient or service, the award shall not exceed the amount the applicant would be charged if he qualified under the provider's sliding scale fee structure. If the applicant receives any form of general public assistance, including, but not limited to, Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, and assistance to the aged and the disabled, the award shall be based on the provider's lowest sliding scale fee.

- (e) Compensation for mental health counseling may be denied for expenses incurred in the following instances:
 - (1) Missed or canceled appointments;
 - (2) non-therapeutic testimonial court appearances by a mental health provider;
 - (3) non-therapeutic investigatory consultations;
 - (4) photocopying and report writing; or
 - (5) tele-therapy or dial-for-therapy services unconnected to any face-to-face consultation of diagnosis.
 - (f) The administrator may authorize payment directly to a mental health provider, but only if the provider has fully cooperated with the office in the investigation of the claim. Any mental health provider that receives payment from the Office of the General Treasurer pursuant to an award under R.I.G.L. sections 12-25-16 et. seq. shall, as a condition of the receipt of such payment, accept such payment as discharging in full any and all obligations of the victim or applicant to pay, reimburse or compensate the provider for services that have been reimbursed under this section. By accepting payment as referenced herein, said mental health provider shall be prohibited from assessing any additional charges against the victim or applicant.
- (4) Loss of Earnings: If, at the time of the crime, the victim was employed, he may be eligible for compensation for loss of earnings.
- (a) In order to be eligible for loss of earnings, the victim must demonstrate that, as a direct result of injuries caused by the crime, he/she is medically disabled from working and, further, the exact number of weeks for which he/she will be disabled from working. Upon request by the office, the victim must submit a disability letter from a treating physician or mental health provider demonstrating that the victim is disabled from working as a direct result of the crime and specifying an exact date when the victim is able to resume working. The disability letter must be on letterhead and must be signed by the treating physician or mental health provider.
 - (b) An award for loss of earnings shall be based on the victim's actual earnings at the time of the crime. If the victim was performing salaried employment at the time of the crime, the award shall be based on the victim's salary at the

time of the crime. If the victim was performing seasonal, nonsalaried or intermittent work at the time of the crime, or if the victim had received a bona fide offer of employment at the time of the crime, the office may look to the victim's earnings history and the value of the victim's contractual work obligations in order to determine the victim's loss of earnings. Any award for loss of earnings based on seasonal, nonsalaried, or intermittent work, or on a bona fide offer of employment shall be based on an average net anticipated salary for the period of employment. If the victim was self-employed, the office may look to the victim's earnings history based on the victim's financial statements or tax returns for the three (3) years prior to the time of the crime. Any award for loss of earnings for self-employed victims shall be based on an average net salary for the aforementioned period of self-employment.

- (c) If, at the time of the crime, the victim was not employed, the administrator shall not make an award for loss of earnings.
- (d) Upon request by the office, the applicant must provide:
 - (1) verification from his/her employer (or, if self-employed, from his/her own income tax records) that he/she was employed at the time of the crime; and of the dates he/she was absent from work, his/her net weekly earnings at the time of the crime, and any sick vacation benefits used in his/her absence;
 - (2) proof of employment and earnings history for one year preceding the crime.
- (e) An award for loss of earnings shall be based on the loss of reported income. Unreported income may not form the basis of an award for loss of earnings.
- (f) An award for loss of earnings shall be based on net (after tax) earnings. Any compensation awarded shall be reduced by any money received or receivable from any other public or private source including, but not limited to, workers' compensation benefits, social security benefits, disability benefits, and sick and vacation benefits.
- (g) Failure to provide proof of earnings, or failure to provide proof of medical disability, may result in denial of a claim for loss of earnings.

(5) Eligibility for Compensation for Loss of Support: Dependents of homicide victims shall be eligible for loss of the victim's financial support in accordance with the following requirements:

- (a) In order to be eligible for loss of financial support, the applicant must demonstrate that, at the time of the crime, he/she was wholly or partially dependent upon the income of the victim at the time of his or her death.
 - (1) An applicant shall be presumed wholly financially dependent on the victim if he/she demonstrates that:

- (a) he/she is a minor child of the victim who was living with the victim at the time of the crime and receiving financial support from the victim; or
- (b) at the time of the crime, was living with the victim and the victim's income constituted his/her primary source of financial support.

(2) An applicant may establish that he/she was partially dependent on the victim by demonstrating that:

- (a) he/she is a minor child of the victim who, at the time of the crime, was not living with the victim but was receiving financial support directly from the victim; or
- (b) at the time of the crime, he/she was living with the victim and dependent on financial support received directly from the victim as shown by the joint loan agreements, joint bank accounts or other documents evidencing financial dependence.

(b) A mutual living arrangement does not, in itself, establish financial dependency. An applicant shall not be eligible for compensation for loss of the victim's rent payments, or room and board payments, to the applicant.

(6) Calculation of Award for Loss of Support: An award for loss of support shall be calculated based on the annual financial support provided by the victim to the applicant at the time of the crime, multiplied by the number of years for which the applicant would have remained financially dependent on the victim, less any public or private benefits received or to be received by the applicant as a result of the victim's death.

- (a) If the applicant was wholly dependent on the victim for financial support, the determination of annual financial support shall be based on the income of the victim at the time of his or her death. The determination of the victim's earnings shall be based on the victim's net earnings at the time of the crime or the victim's average net earnings for one year preceding the crime, whichever is greater.
- (b) If the applicant was partially dependent on the victim for financial support, the determination of annual support shall be based on:
 - (1) the actual amount of financial support received directly from the victim at the time of the crime; or
 - (2) if the applicant is a minor child of the victim, the actual amount of financial support received from the victim at the time of the crime.
- (c) The applicant must demonstrate the number of years for which he/she would have remained financially dependent on the victim. In making this determination, the following limitations shall apply:

- (1) if the applicant is a minor, the period of dependency shall continue until the applicant reaches the age of 18 years old.
 - (2) the period of dependency shall not exceed the life expectancy of either the victim or the applicant, whichever is sooner.
 - (d) If two or more applicants seek compensation for loss of financial support from the same victim, the award shall be apportioned based on each applicant's loss of financial support from the victim.
 - (e) As a condition of making an award to a minor dependent of a crime victim, the administrator may require that such funds be placed in a trust account for the benefit of the minor dependent. The administrator may also require that the applicant or individual entrusted with the care and custody of the minor dependent execute and deliver to the office a trust agreement certifying that said individual will hold the funds separate and apart from his/her own monies, that said individual will, throughout the period of the minor dependent's minority, hold and safeguard said funds for the benefit of the minor dependent, expend said funds for the health and welfare of the minor dependent, and that upon the minor dependent's attainment of majority, transfer title to all remaining funds and investments made on his/her behalf to said minor dependent. If, at the time of the award, a permanent guardian has not been appointed for the minor dependent, the office may defer issuance of all or part of the award until such time as a permanent guardian or trustee has been appointed, or until the dependent reaches the age of 18, whichever is sooner.
- (7) Funeral and Burial Expenses: An award for funeral and burial expenses shall be based on reasonable and necessary expenses actually incurred by the applicant as a result of the death of the victim, less burial and life insurance benefits and less contributions and donations received from friends, other relatives or other sources.
- (a) Taking into consideration the amount of revenue in the violent crimes indemnity account and the number and nature of claims pending against it, the maximum award for funeral and burial expenses shall be limited to \$5,000.
 - (b) Funeral and burial expenses shall be limited to those expenses incurred at the funeral home, including reasonable and necessary cemetery charges, and including reasonable and necessary expenses for a headstone for the victim and such other reasonable and necessary charges as determined by the administrator.
 - (c) If the applicant is eligible for payment of funeral and burial expenses through the Department of Human Services pursuant to R.I.G.L. section 40-6-3.10, this benefit must be deducted from the funeral and burial expenses actually incurred by the applicant.
 - (d) The office may award emergency compensation under the 1999 amendments to the Criminal Injuries Compensation Act of 1996 for the burial expenses of a victim who dies as a direct result of a violent crime. An award for emergency compensation shall be awarded at the sole discretion of the administrator. An award for emergency compensation shall not exceed the sum of five thousand

(\$5,000) dollars. Any award for emergency compensation shall be deducted from the final award. In the event the victim is later found to be ineligible for compensation under the provisions of R.I.G.L. 12-25-16 et. seq., then the victim's estate or the applicant, or both, shall repay the amount of the emergency award to the fund.

- (e) The office shall work with law enforcement authorities to obtain relevant facts and circumstances surrounding the events that led to the death of the victim before making an emergency burial award, including, but not limited to, reviewing police reports and records and the criminal record, if any, of the victim. If the administrator determines that the victim is not eligible, then no emergency burial award will be made.
- (f) The office will act as expeditiously and thoroughly as possible to ensure that prompt payment of an emergency burial award is made.

(8) Pain and Suffering:

This subsection 8 of Section 1.07 shall not apply to any claims for compensation filed pursuant to the 1999 amendments to the Criminal Injuries Compensation Act of 1996. Accordingly, any claims involving crimes resulting in personal injury or death which occurred on or after September 1, 1999 would not be eligible for an award for pain and suffering.

Further, any claims arising under or made pursuant to the 1972 or 1996 acts which are voluntarily transferred by the applicant into the program established pursuant to the 1999 amendments to the Criminal Injuries Compensation Act of 1996 would not be eligible for an award for pain and suffering. The applicant and/or the victim, by transferring said claim, would waive all rights to a claim of pain and suffering. As to claims filed pursuant to the 1972 Act or the 1996 Act, only a victim, the legal guardian of a victim, or the child advocate filing an application for compensation on behalf of a minor victim are eligible for an award for pain and suffering. Relatives, dependents, and legal representatives of the victim's estate are not eligible for an award for pain and suffering.

- (a) In determining the amount of the pain and suffering award, the administrator shall take into consideration the rates and amounts payable for injuries and death under other statutes of this state and of the United States, and the amount of revenue in the violent crimes indemnity account and the number and nature of claims pending against it. The amount of the award for pain and suffering shall be based on the amount deemed necessary and appropriate, taking into account the particular circumstances involved in the crime and the financial resources available in the violent crimes indemnity fund.
- (b) An award for pain and suffering shall be based on a rate of \$250.00 per week for each week of total disability and a rate of \$125.00 per week for each week of partial disability. For the purpose of determining an award for pain and suffering, the number of weeks the victim is totally or partially disabled shall mean that period of time during which the victim was either:
 - (1) hospitalized as an inpatient at an acute care hospital, non-acute rehabilitation hospital, nursing home facility, or psychiatric hospital; or
 - (2) treated on an ongoing basis by a physician or mental health provider for injuries incurred as a direct result of the crime; or

(3) unable to resume employment due to the injuries incurred as a direct result of the crime.

(c) The victim must submit a disability letter from a treating physician or mental health provider specifically describing the victim's disability, the exact number of weeks the victim received treatment from the physician or mental health provider, and the exact number of weeks the victim was totally disabled and/or partially disabled.

(9) Attorney's Fees: For any cases currently pending under the 1972 Act, upon a judgment in favor of the plaintiff, the amount of compensation awarded to a plaintiff's attorney shall not exceed fifteen percent (15%) of the total amount awarded to the plaintiff, or two thousand dollars (\$2,000), whichever is less, provided, however, that in unusual circumstances, the court may award a larger attorney's fee if it finds that a departure from the limits set forth herein is warranted, stating specific reasons upon which the finding and award is based. For case filed pursuant to the 1996 Act or the 1999 amendments to the Criminal Injuries Compensation Act of 1996, A attorney fees shall only be awarded upon a successful request for reconsideration of the administrator's decision to the treasurer or the treasurer's designee or upon a successful appeal of the treasurer or the treasurer's designee's decision to the superior court. Any attorney who charges, demands, receives or collects for services rendered in connection with any proceeding under the 1996 Act or the 1999 amendments to the Criminal Injuries Compensation Act of 1996, any amount in excess of that allowed under this section, if any compensation is paid, shall be subject to disciplinary action and other appropriate action to be taken by the Supreme Court of the state of Rhode Island.

(a) In order to be eligible for an attorney fee award, the following conditions must apply:

(1) the attorney must fully cooperate with the office in the investigation of the application, including fully and promptly responding to all requests for information and verification; and

(2) the attorney must submit an affidavit which sets forth the hours worked, the services rendered, and the amount of fee proposed to be charged for representing the application during the proceedings.

(b) In determining the amount of an attorney fee award, the treasurer or the treasurer's designee shall make a determination, based on the attorney affidavit and a review of the file, of a reasonable amount of time in preparation, in settlement negotiations, and in hearing attendance, the total amount awarded to the applicant for injuries incurred, and the amount of revenue in the violent fines indemnity account, together with the number and nature of the claims pending against it.

(c) In no event shall an attorney fee award exceed 15% of the total award for compensation, or fifteen hundred dollars (\$1,500), whichever is less, provided, however, that in unusual circumstances, the treasurer or court may award a larger attorney's fee if it finds that a departure from the limits set forth in this subsection is warranted, stating specific reasons upon which the finding and award is based.

- (d) Attorney's fees shall not be awarded in those cases brought by the office of the child advocate.

Section 1.08: Limitations on Compensation

- (1) Violent Felonious Criminal Conduct: If the victim has pled nolo contendere or been convicted of violent felonious criminal conduct committed within the past five (5) years or subsequent to his or her injury, the administrator may reduce or deny an award to the applicant or applicants.
- (2) If the victim has been convicted of a crime of violence as defined under Rhode Island law, the administrator may reduce or deny an award to the applicant or applicants. In determining whether to reduce or deny an award, the administrator may consider the following factors:
 - (a) The remoteness in time between the prior conviction and the application for benefits;
 - (b) The nature and seriousness of the crime which led to the conviction;
 - (c) The extent and gravity of the injury to the claimant's victim(s) in the crime which led to the conviction;
 - (d) The victim's disdain for the law as represented by the extent of the victim's prior criminal record; and
 - (e) The victim's remorse and rehabilitation since the conviction, such as, the efforts made by the victim to provide restitution for the crime committed which led to the conviction or efforts made by the victim to reimburse the office for payments made to any person or entity in connection with the convictions.
- (3) Any individual who is incarcerated at any criminal institutional facility at the time of his or her injury shall not be eligible to receive an award of compensation.
- (4) Contribution: To the extent the victim's acts of conduct provoked or contributed to the victim's injuries, the administrator shall reduce or deny the award to the applicant or applicants.
 - (a) Definition of contributory conduct: Contributory conduct is intentional conduct, willingly and knowingly engaged in by the victim, that is both a direct cause, and a proximate cause, of the victim's injuries.
 - (b) Circumstances that, in general, do not warrant the denial of reduction of an award based on contributory conduct include:
 - (1) acts of self defense or defense of others;
 - (2) acts attributable to reasonable efforts by the victim to aid a crime victim, to prevent a crime from occurring in his/her

presence, or to apprehend a person who has committed a crime in his/her presence.

- (c) Circumstances that may warrant a reduction or denial of an award based on contributory conduct include:
- (1) crimes in which the victim deliberately provoked the offender by means of fighting words, racial or other bias-motivated taunting, or by threats coupled with overt actions indicating the victim's intent to carry out the threat;
 - (2) crimes in which the victim initiated or significantly escalated a physical altercation with the offender;
 - (3) crimes in which the victim could have anticipated the conflict and retreated, but decided not to retreat;
 - (4) crimes constituting acts of retaliation or retribution for a crime or crimes previously committed by the victim;
 - (5) crimes in which the victim acted as an accomplice to the offender;
 - (6) crimes committed during the course of an illegal act in which the victim was a knowing and willing participant ;
 - (7) crimes in which the victim's felony criminal record, coupled with the circumstances of the crime, lead to the reasonable inference that the crime for which the applicant seeks compensation was directly caused or provoked by the victim's criminal history.
- (d) If the administrator finds that a victim knowingly and willingly engaged in intentional conduct that was a direct cause of his/her injuries, the administrator shall determine the proximate cause of the victim's injuries and may deny, reduce or allow the award as follows:
- (1) if it was reasonably foreseeable that the victim's contributory actions would result in injuries of the type and nature he/she sustained, the application shall be denied (e.g. an implicit or explicit agreement to fight, in which a physical altercation ensued resulting in mutual injuries).
 - (2) if it was reasonably foreseeable that the victim's contributory conduct would result in injuries to the victim, but it was not reasonably foreseeable that his/her actions would result in injuries of the type and nature sustained by the victim, the award may be reduced by 50% percent (e.g. victim was stabbed or shot in response to punching the offender).

- (3) if the victim's injuries were not reasonably foreseeable, the award shall not be reduced or denied even though the victim's actions were an actual and direct cause of his injuries (e.g. victim was stabbed or shot in response to verbal provocation of the offender).

(5) Unjust Enrichment:

- (a) An applicant shall not be eligible for compensation if such compensation would directly or indirectly unjustly benefit the offender.
- (b) In no event shall an applicant be denied compensation solely because of the applicant's or the victim's familial relationship with the offender or because of the sharing of a residency by the victim of applicant and the offender.

Section 1.09: Appeals

(1) Request for Reconsideration:

- (a) Within fifteen (15) days of the date of receipt of the notice of an award or denial, the applicant may submit a request for reconsideration of the administrator's decision. The request for reconsideration must be in writing, accompanied by any further documentation supporting the application and the request for reconsideration.
- (b) In addition, the administrator, in his or her own discretion, may reconsider a decision awarding or denying compensation where there has been no request for reconsideration. The administrator shall then issue an amended notice of award or denial.
- (c) Within thirty (30) days of the receipt of the request for reconsideration and the supporting documentation, the treasurer or the treasurer's designee shall reconsider any award or denial and, based on the additional supporting documentation submitted by the applicant, shall either affirm the award or denial, or issue an amended award or denial or remand the matter to the administrator for further review. The applicant shall be notified of the decision upon reconsideration by certified mail, return receipt requested, and by first class mail. The decision of reconsideration shall be accompanied by information informing the applicant of the right to judicial review of the decision upon reconsideration.
- (d) Any request for reconsideration that involves a medical expense, mental health counseling or psychiatric care expense, or funeral and burial expense not previously submitted with the original application shall be treated as a reopening of the application for compensation. The administrator shall investigate the request for reopening and issue a supplemental award, if appropriate.

- (e) If no request for reconsideration is filed within the time period specified in R.I.G.L. section 12-25-18(f), the decision of the administrator shall be final.

(2) Appeals:

- (a) Within thirty (30) days of the treasurer's or treasurer designee's decision upon reconsideration, the applicant may petition the superior court for judicial review pursuant to the Administrative Procedures Act, R.I.G.L. section 42-35-15 and pursuant to R.I.G.L. section 12-25-18 (h).

Section 1.10: Obligations of the Applicant

- (1) Applicant's Obligations: An applicant shall have the following obligations with respect to an application for compensation:

- (a) The application must be made on an application form provided by the office;
- (b) The application must be signed by the applicant under the pains and penalties of perjury;
- (c) The application must be accompanied by copies of bills and other supporting documentation necessary to verify the application; and
- (d) The application must contain a release of information necessary to investigate the application.

- (2) Continuing Obligations: An applicant shall have a continuing obligation to:

- (a) provide the office with current information relating to the application;
- (b) cooperate with the office in the investigation of the application including responding promptly to all requests for further information and verifications, and responding promptly to all requests to exhaust other sources of reimbursement;
- (c) notify the office of any change in address;
- (d) provide information to the office about any civil action anticipated or filed in connection with the crime;
- (e) exhaust all other sources of payment or reimbursement for compensable expenses, and promptly notify the office of any order for payment or eligibility for payment received or to be received by the victim or by any of his or her dependents and relatives from any other source, including, but not limited to:
 - (1) life insurance, health insurance, disability insurance or any other private or public insurance program for personal injury or death, including lost wages;
 - (2) workers' compensation, social security benefits, veterans benefits, retirement benefits or other private or public benefit program from the

United States, the state of Rhode Island or any state or any of its subdivisions;

- (3) Medicaid, Medicare, community free service, charity care, free care or uncompensated care, or any other form of public assistance to the aged and disabled or any successor;
 - (4) restitution in the criminal action received from the offender or from any person on behalf of the offender.
 - (5) proceeds from a civil suit; or
 - (6) institutional gifts, charitable gifts, contributions, or donations.
- (f) In the event that an award has been issued and payment has been made by the office, the applicant and/or victim shall promptly reimburse the violent crimes indemnity fund, to the extent of compensation actually paid, for payments received from any other source that exceed the total compensable injuries suffered by the victim as determined by the administrator.
- (g) In the event that an award has been issued but payment has not been made by the office, the office shall be entitled to withhold payment to the applicant and/or victim when said applicant and/or victim has received payments from or settled any matter with any other source as mentioned herein that exceed the total compensable injuries suffered by the victim as determined by the administrator.
- (3) Burden of Proof: The applicant has the burden of demonstrating his/her eligibility for compensation, and his/her compensable expenses, by a preponderance of the evidence. The applicant must provide written documentation to establish the facts supporting his/her application for compensation. Such documentation shall include, where appropriate, all expenses, lost wage verifications, W-2 forms, tax returns, death and birth certificates, and the incident report from the appropriate law enforcement authorities.
- (4) Failure to Comply: An applicant's failure to comply with any obligation set forth in Section 1.00 may result in denial of the application for compensation.
- (5) Fraudulent Application: Any person who submits a false or fraudulent application; intentionally makes or causes to be made any false statement or representation of a material fact in relation to any application pending before the office; or intentionally conceals or fails to disclose information affecting the amount or the initial or continued right to any such award shall be punished by a fine or not more than one thousand dollars (\$1,000) or imprisonment for not more than six (6) months, or both.

Section 1.11: Recovery from Offender

- (1) Whenever any person is convicted of an offense and compensation is awarded for a personal injury or death resulting from the act constituting the offense, the state of

Rhode Island shall institute an action against that person for the recovery of the whole or any specified part of the compensation in the superior court of the state of Rhode Island in any county, or in the state or federal court of any other state or district in which that person resides or is found.

- (2) The administrator shall pursue such recovery whenever possible in order to provide additional funds for the violent crimes indemnity account. If such action is impractical or impossible, the administrator shall make a finding in writing stating the reasons why such action is not instituted.
- (3) When a court orders a defendant to make financial restitution to the victim of a crime to whom compensation has been awarded pursuant to R.I.G.L. sections 12-25-1 et. seq., the state of Rhode Island may enforce the civil judgment entered by the trial court against the defendant on behalf of the victim pursuant to R.I.G.L. section 12-28-5.1.
- (4) An action instituted by the state of Rhode Island against any person for the recovery of the whole or any specified part of the compensation awarded as mentioned herein must be commenced within ten (10) years from the date compensation is awarded by the office.
- (5) Notwithstanding the provisions of Section 1.08 herein, in the event that an offender files an application for compensation with the office, the administrator shall have the authority to reduce any amount of compensation awarded to the offender by any sum awarded to the victim of the offender.

Section 1.12: Confidentiality of Records

All medical records, mental health counseling records, psychiatric records, employment information, personal financial information and investigative records received, obtained or maintained by the office in connection with any application for compensation shall be maintained as confidential investigative material, and shall not be released or disclosed to any person or entity whatsoever, except as authorized by the applicant or as otherwise provided by law. The application and the notice of award or denial shall be deemed public records, unless otherwise provided by law.