

## ELIGIBILITY

(18 P.S. §11.701-702; §11.707 and 37 Pa Code §411.3; §411.11; §411.15; §411.16)

### Eligibility at a Glance:

Use these statements as a quick reference for determining eligibility. However, there are exceptions to some of these requirements. More detail is provided throughout this chapter on the eligibility requirements.

- The crime occurred in Pennsylvania.
- The crime was reported to the proper authorities within 72 hours.
- A claim must be filed no later than two years after the discovery of the occurrence of a crime. (**Exception for Child Victims—See Below**)
- The minimum loss requirements are met.
- The victim cooperates with law enforcement, VCAP and the prosecution of the offender.
- The victim did not participate in illegal activity that caused his/her injuries.
- An eligible crime was committed.

If you can check all of the above, then there's a good chance the person you are working with is eligible for compensation.

### Who is Eligible for Compensation:

- A direct victim
- An intervenor
- A surviving spouse, parent or child of a deceased victim or intervenor
- Any person dependent for principal support upon a deceased direct victim or intervenor (for loss of support)
- Any person who assumes the obligation or who pays for the crime-scene cleanup, funeral, or burial expenses incurred as a direct result of the crime
- Hospitals or other licensed health care providers (for forensic rape examinations only)
- Persons eligible for counseling (for counseling only)

**Eligible Claimants:**

**EXCEPTION:** A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person shall not be eligible to receive compensation with respect to the claim. A member of the family of the individual who committed the crime shall not be eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award.

### Who may File a Claim for Compensation (Eligible Claimant):

- A claim may be filed by anyone eligible for compensation (previous page).
- If the victim is a *minor*, a parent or guardian may file the claim. If the parent or guardian of a minor who is eligible for compensation is unavailable or fails to assume financial responsibility for the minor's care, a person who assumes financial responsibility for services eligible for compensation and who is not a provider of services or an insurance

company may file a claim on behalf of the minor and may receive compensation for eligible services provided to the minor.

- A claim for an *individual who is mentally incompetent* may be filed by his/her guardian or legal representative. If the guardian or legal representative is unavailable or fails to assume financial responsibility for the mentally incompetent individual, a person who assumes financial responsibility for services eligible for compensation may file a claim on behalf of the mentally incompetent individual and may receive compensation for eligible services provided to the individual.

**Requirements for receiving compensation:**

1. The crime occurred in Pennsylvania, or to a Pennsylvania resident who is injured or killed in a foreign country that does not have a compensation program, or by an act of international terrorism.

**The following countries have a compensation program:** Australia, Austria, Belgium, Bermuda, Canada, Colombia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain and Northern Ireland, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Slovakia, Republic of Korea, Spain, Sweden, Switzerland, Taiwan, Trinidad and Tobago.

*If you are working with a Pennsylvania resident who is injured or killed in an act of international terrorism, make sure to look into helping that person file for compensation through the International Terrorism Victim Expense Reimbursement Program (ITVERP) offered through the Office for Victims of Crime in the Office of Justice Programs. The ITVERP may have other benefits and higher maximums than the Pennsylvania program. For more information, go to the Office for Victims of Crime website at [www.ovc.gov](http://www.ovc.gov) or call 800-363-0441.*

2. The crime was reported to the proper authorities within 72 hours after the occurrence or discovery of the crime, *unless good cause is shown*. Filing a Protection from Abuse (PFA) Order is also considered reporting to proper authorities even if no report is made to the police. Please Note: A reason for delay in reporting must come directly from the victim/claimant. It may be accepted over the phone or in writing.

Examples of good cause for a delay in reporting include:

- the victim/claimant is mentally or physically incapacitated,
- the victim is a minor,
- there is a fear of retaliation,
- the occurrence of the crime is not readily apparent, or
- other circumstances where good cause is shown by the claimant.

**Proper Authorities:** May include *law enforcement officer, district attorney or other applicable prosecutorial authority, magisterial district judges, military police, campus police, U.S. Postal Inspection Service, appropriate hospital security, probation and parole officer, child protective services, adult protective services, or in the case of a PFA order, the prothonotary or equivalent authority. If the crime occurs in a foreign country also includes the U.S. Consulate. The 72-hour reporting requirement has been met if the victim reported to any of the above.*

**PLEASE NOTE:** *Since most of the above have a responsibility to file a report with police, VCAP will still review the police report. Only on rare occasions will there not be a police report made and VCAP has discretion to review on a case-by-case basis the claims where there is no police report.*

3. A claim must be filed not later than two years after the crime, discovery of the occurrence of the crime, or two years after the death of the victim as a result of the crime, or two years after the discovery and identification of the body of a murder victim. (Exceptions exist if the victim is a child. See Below\*\*) )

**Example:** *A home was destroyed by fire in May, 2010. The local police conducted an investigation at the time but it was not until November 2011 that a state police fire marshal determined the fire to be arson. The victim has two years from November 2011, the date it was discovered that a crime occurred, to file a claim.*

### **\*\*Filing Time Extension for Children:**

For crimes occurring on or after 8/27/02, when the victim is under the age of 18 at the time of the crime and the alleged **perpetrator is one of the individuals listed below**, the filing time is extended until the victim reaches age 23 or the statute of limitations for the crime expires, whichever is greater. **The victim is eligible for all benefits.**

The perpetrator is:

- *the victim's parent,*
- *a paramour of the victim's parent,*
- *an individual residing in the home with the victim, or*
- *an individual responsible for the victim's welfare.*

If the alleged **perpetrator is not** one of the above individuals then the filing time is still extended until the victim reaches age 23 or the statute of limitations for the crime expires, whichever is greater, **but the victim is only eligible for counseling to include related medications.** (See "COUNSELING".)

**EXAMPLE:** A 15-year-old was a victim of rape in October 2013, and filed a claim in April 2016. The offender was her boyfriend. This victim is only eligible for counseling as the offender was not her parent, paramour of parent, or person responsible for her welfare, a paramour of her parent, or an individual residing in her household. Because the victim was under age 18 at the time of the rape, she has until she reaches age 23 to file a claim for counseling or until the statute of limitations for rape expires, whichever is later.

**\*\*REMEMBER: If a claim is filed within two years of the occurrence or discovery of the crime, a minor victim is eligible for all benefits, regardless of relationship to perpetrator.\*\***

Please refer to the [\*\*“HELPFUL INFORMATION - CHILD VICTIMS: Section for more information on filing claims for child victims.\*\*](#)

***FOR CRIMES OCCURRING PRIOR TO 8/27/02, PLEASE CONTACT VCAP.***

4. The minimum loss requirements are met:
  - If the victim is under age 60, there must be a minimum loss of \$100 from any combination of benefits offered by VCAP.
  - If the victim is age 60 or older, then no minimum loss is required.
5. The victim fully cooperates with law enforcement, VCAP and the courts, *unless good cause is shown*.

Examples of good cause for non cooperation include:

- The direct victim, or claimant is mentally or physically incapacitated.
- There is a fear of retaliation.
- The victim is a minor.
- Other circumstances where good cause is shown by the claimant.

#### PFA Information:

- Filing a Protection from Abuse (PFA) Order is considered reporting to proper authorities even if no report is made to the police.
- If a temporary PFA Order is issued and the claimant chooses not to pursue a final order, OVS will consider the PFA withdrawn and deny the claim unless OVS determines the withdrawal to be justified. Justification includes when: 1) the direct victim or intervenor or claimant is mentally or physically incapacitated; 2) there is fear of retaliation; or 3) other circumstances where good cause is shown by the claimant and deemed appropriate by the VCAP.
- If there is a violation of a PFA and the victim needs to file for compensation as a result, the violation must be reported to proper authorities in order to be considered for compensation payments.

- Claimants do not have to wait until a PFA becomes final to file a claim. In the process of verifying a claim, the VCAP will confirm the disposition of the final PFA
  - On a case-by-case basis the VCAP may consider claims where the claimant filed and was granted a temporary PFA, however the judge did not grant the permanent order.
6. The victim did not engage in conduct that caused his/her injuries. The VCAP may deny a claim or reduce the amount awarded if it determines that the conduct of the victim contributed to the injury.

**EXCEPTIONS:**

- The conduct of a homicide victim is not considered when an eligible claimant files for counseling. 18 P.S. §11.707 (f)(3)
- If the crime involved is rape or sexual assault, the conduct of the direct victim shall not be considered. 18 P.S. §11.707 (f)(2)
- If the crime involved is related to domestic violence, the conduct of the direct victim shall not be considered unless the direct victim was the primary aggressor. 18 P.S. §11.707 (f)(1)

VCAP examines a claim for a causal connection between the illegal activity or contributory conduct and the injuries sustained. Do not automatically assume that the claim will be denied because someone was engaged in illegal activity at the time of the crime. See the "[CONTRIBUTION/DENIAL DETERMINATIONS](#)" for more information on causal connection and exceptions.

7. At least one of the following eligible crimes must have been committed:
- 18 Pa. C.S. (Title 18 - relating to crimes and offenses—see partial list below)
  - 35 Pa. C.S. (known as The Controlled Substance, Drug, Device and Cosmetic Act)
  - 23 Pa. C.S. Ch. 61 (relating to protection from abuse)
  - 23 Pa. C.S. Ch. 61 §6114 (contempt for violation of order or agreement)
  - The former 75 Pa. C.S. §3731 (relating to driving under the influence of alcohol or controlled substance)
  - 75 Pa. C.S. §3732 (relating to homicide by vehicle)
  - 75 Pa. C.S. §3735 (relating to homicide by vehicle while driving under the influence)
  - 75 Pa. C.S. §3735.1 (relating to aggravated assault by vehicle while under the influence)
  - 75 Pa. C.S. §3742 (relating to hit and run)
  - 75 Pa. C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs) in cases of bodily injury
  - 30 Pa. C.S. §5502 (relating to operation of watercraft while under the influence)
  - 30 Pa. C.S. §5502.1 (relating to homicide by watercraft while under the influence)

**Title 18 crimes** include (but are not limited to) the following:

- Chapter 25—Homicide, manslaughter
- Chapter 27—Assault, reckless endangerment, terrorist threats, harassment or stalking, ethnic intimidation, and neglect of care-dependent person
- Chapter 29—Kidnapping, unlawful restraint, criminal coercion, false imprisonment
- Chapter 31—Rape, sexual assault, institutional sexual assault, indecent exposure
- Chapter 33—Arson and related offenses
- Chapter 35—Burglary, criminal trespass
- Chapter 37—Robbery, robbery of motor vehicle
- Chapter 39—Theft, theft by deception
- Chapter 43—Bigamy, incest, endangering welfare of children
- Chapter 49—Victim and witness intimidation
- Chapter 63—Corruption of minors, sexual abuse of children

The above list is not a comprehensive list of the Title 18 crimes eligible for compensation. For the complete list of Title 18 crimes, refer to the Crimes Code citation:

18 Pa.C.S. § 101 et seq.

*Benefit maximums:*

In most cases, total compensation will not exceed \$35,000. Most benefits also have individual caps within the \$35,000 limit. Counseling, crime-scene cleanup, and forensic rape exam costs are three benefits which are over and above the \$35,000. Refer to the bottle graphic for a visual of the benefit caps and maximums. Every benefit contained within the bottle falls under the \$35,000 cap, with their individual caps listed and everything over and above the \$35,000 cap is listed on the outside of the bottle.



**PLEASE NOTE:** For crimes occurring prior to 12/12/09 the total payable for funeral expenses is \$5,000.

*Payor of Last Resort/Collateral Resources:*

The Crime Victim's Compensation Fund is the payer of last resort, which means that the victim/claimant must utilize all other sources of insurance, public benefits, pensions or settlements that could pay for expenses related to the injury before compensation can be considered.



Other sources are referred to as collateral resources. The following are examples of Collateral Resources when received by the claimant as a result of the crime:

- All types of medical insurance: (HMOs, Blue Cross, Blue Shield, Major Medical, Medical Assistance, Medicare and private health plans);
- Life insurance where the claimant is the beneficiary;
- Auto insurance;
- Settlements from civil litigation;
- Worker's Compensation;
- Sick, vacation, annual or personal pay;
- Disability pay;
- Pension plans including those providing for disability or survivor's benefits;
- Cash assistance and food stamps; and
- Paid restitution.
- Social Security (disability, supplemental income, survivors, etc.)

**EXCEPTION:** With a **"FORENSIC RAPE EXAMINATIONS"**, the claimant has the option of choosing whether to access their insurance, and for **"STOLEN CASH"** claims, if the amount stolen is less than or equal to the deductible on the victim's homeowner's or renter's insurance, VCAP does not require the victim to file with his/her insurance.

When a victim is covered by insurance, any **co-pays** or **deductibles** may be submitted for compensation.

It is not required that a victim or claimant utilize available/accrued **sick, vacation, annual or personal leave**, however, if they do utilize the benefits, the amount will be offset.

Miscellaneous Eligibility Information:

Estate—The estate of a victim cannot file a claim (not an eligible claimant). However, if a bodily injury claim has been filed and the direct victim subsequently dies, the VCAP may substitute the executor or administrator to complete the processing of the claim.

Prisoners— Claims for losses resulting from crimes committed in a correctional facility to an incarcerated person will be reviewed on a case-by-case basis. VCAP is the payer of last resort and as such requires that all other potential sources, including public funds, be accessed. Exceptional circumstances may exist so please contact VCAP if you have this situation.

Undocumented Immigrant – May submit a claim for consideration.

Property - A claim cannot be paid for property loss or damage (except certain medical equipment and supplies; or certain official documents, i.e., driver's license, passport, etc. on case by case basis).

Pain and suffering – VCAP does not reimburse for pain and suffering.

Filing Date - The official filing date for claims submitted by mail is the postmark date on the envelope. For claims electronically filed through DAVE, the date received is the date when the “Send completed claim to PCCD” button is pressed.

Signature - The claimant must sign the Acknowledgement and Reimbursement Agreement and the Authorization to Obtain Information on the back of the claim before the processing of the claim begins.



### *Eligibility Q & A*

- Q A Pennsylvania resident was a victim of an assault while vacationing in Florida. The victim was taken to a Florida hospital for treatment of his injuries. He now has medical bills as a result of the crime but does not have insurance. Can the victim file a claim in Pennsylvania?
- A No, a claim must be filed in the state where the crime occurred.
- Q A Pennsylvania resident was a victim of sexual assault while vacationing in Spain. Can this victim file with the VCAP for counseling expenses?
- A No. Since Spain has a compensation program, the victim must file with Spain's program.
- Q A Pennsylvania resident was seriously injured in an assault while working as a freelance reporter in Kenya. He now has many unpaid medical bills and is unable to work because of his injuries. Where should this victim file a compensation claim?
- A *Since Kenya does not have a compensation program, he may file with Pennsylvania's VCAP.*
- Q A man shot his wife during an argument. The woman survived but has been in the hospital for an extended period of time. The victim's sister is caring for her two children who witnessed the shooting. The children are receiving counseling and the victim's sister is seeking compensation for their counseling expenses, which she has paid for. Is the victim's sister an eligible claimant?
- A *Yes. An eligible claimant is any person who assumes the financial responsibility for a minor child if the parent of that minor child is unavailable or fails to assume financial responsibility. In addition, the sister is eligible for counseling for herself as a result of the crime.*
- Q Does a victim have to wait for his/her PFA to become final to submit a claim to VCAP?
- A *No, he/she can submit a claim before his/her PFA becomes final. In the process of verifying a claim, the VCAP will confirm the disposition of the final PFA.*
- Q Are stolen Food Stamps or broken doors eligible for compensation?
- A *No. They are considered personal property and not covered under VCAP. The victim may have recourse through the Department of Public Welfare for the stolen food stamps.*
- Q A victim, age 25, was unable to return to work for three days after being assaulted. All of the victim's medical expenses were covered by insurance with the exception of \$30 in copays. Is the victim eligible for out-of-pocket expenses and loss of earnings?
- A *Yes, provided the combined minimum out-of-pocket expenses and loss of earnings was at least \$100.*

Q If a victim was on Medical Assistance at the time of the crime, can he/she be considered for any compensation for medical expenses?

A *Yes. The victim could be considered for any medical expenses not covered by Medical Assistance, such as co-pays, deductibles or non-covered medical supplies or services. Remember that the \$100 minimum loss must be met if victim is age under age 60.*

*Please refer to the [“Appendix A - BENEFITS AT-A-GLANCE”](#) at the end of the manual for a quick guide to the range of compensation benefits, the supporting documents needed to receive an award for each benefit and the maximums for those benefits. Please refer to the specific benefit chapters in this manual for more detailed explanations, examples and tips.*