

WEST VIRGINIA CODE ANNOTATED

§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses; penalties.

(a) Any person who operates or attempts to operate a clandestine drug laboratory is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two years nor more than ten years or fined not less than five thousand dollars nor more than twenty-five thousand dollars, or both.

(b) For purposes of this section, a "clandestine drug laboratory" means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof for the purpose of manufacturing methamphetamine, methylenedioxyamphetamine or lysergic acid diethylamide in violation of the provisions of section four hundred one of this article.

(c) Any person convicted of a violation of subsection (a) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine drug laboratory.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 11. CLANDESTINE DRUG LABORATORY REMEDIATION ACT.

§60A-11-1. Legislative findings and purpose.

(a) *Findings.* -- The Legislature finds that some residential and business properties are being used for the consumption, production and manufacture of illegal drugs resulting in contamination with hazardous chemical residues. These illegal laboratories present an immediate and ongoing danger to public health and safety. Innocent members of the public may be harmed when they are exposed to the chemical residues if the property is not decontaminated prior to subsequent rental, sale or use of the property.

(b) *Purpose.* -- The purpose of this article is to protect the public health, safety and welfare by designating the Department of Health and Human Resources as the state agency to set forth standards for the remediation of clandestine drug laboratories.

§60A-11-2. Definitions.

In this article:

(a) "Clandestine drug laboratory" means the area or areas where controlled substances, or their immediate precursors, have been, or were attempted to be, manufactured, processed, cooked, disposed of or stored and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing.

(b) "Department" means the West Virginia Department of Health and Human Resources.

(c) "Controlled substance" means the same as that term is defined in section one hundred one, article one of this chapter and article ten, section three of this chapter a drug, substance or immediate precursor in Schedules I through V of article two of this chapter.

(d) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the State Board of Pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(e) "Law-enforcement agency" means the West Virginia State Police or any other policing agency of the state or of any political subdivision of the state.

(f) "Remediation" means the act of rendering safe and usable for the purposes for which it is intended residential property, as defined in subsection (g) of this section, or any structure appurtenant to the residential property, or other structure on the residential property that has been used for the manufacture or consumption of methamphetamines or other illicit drug products.

(g) "Residential property" means any building or structure to be primarily occupied by people, either as a dwelling or as a business, including, but not limited to, a storage facility, a mobile home, manufactured home or recreational vehicle, hotel or motel that may be sold, leased or rented for any length of time.

(h) "Residential property owner" means the person holding record title to residential property as that term is defined in subsection (f) of this section.

§60A-11-3. Remediation of clandestine drug laboratories; promulgation of legislative rules.

(a) The Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to address, at a minimum, the following issues:

(1) Establishment of scientific guidelines and numeric decontamination levels for the remediation of clandestine drug laboratories;

(2) Establishment of a certification program for persons or contractors who engage in the business of clandestine drug lab remediation;

(3) Establishment of a licensure procedure whereby individuals and businesses certified to do remediation of clandestine drug laboratories obtain a license from the Department of Health and Human Resources to do such work;

(4) Requiring licensed contractors to notify the Department of Health and Human Resources prior to beginning any remediation project;

(5) Setting forth certification procedures for the department to certify that the completed remediation of the residential property fully meets the scientific guidelines and numeric decontamination levels set forth in the legislative rule; and

(6) Establishing requirements for property owners, sellers and landlords to disclose the existence of any former clandestine laboratory site or activity to any potential occupant of the residential property.

(b) Fees may be set by the legislative rule to be charged to persons or contractors engaged in the business of clandestine drug laboratory remediation for certification, licensing and notification as required in this article.

§60A-11-4. Law-enforcement responsibility.

Any law-enforcement agency, upon locating chemicals, equipment, supplies or precursors indicative of a clandestine drug laboratory on residential property, shall notify the residential property owner and the department in a manner prescribed by the legislative rule authorized by this article.

§60A-11-5. Residential property owner responsibility; owner immunity; voluntary compliance.

(a) Upon notification to the residential property owner by a law-enforcement agency that chemicals, equipment, supplies or precursors indicative of a clandestine drug laboratory have been located on the residential property owner's property, the residential property owner shall be responsible for actions necessary to meet the remediation standards established by the legislative rule authorized by this article. The residential property owner is responsible for actions to ensure the residential property shall remain unoccupied from the time the residential property owner is notified of the clandestine drug laboratory until such time as the department certifies that the completed remediation meets the numeric decontamination levels set forth in the legislative rule authorized in this article. The department shall have forty-five days from receipt of all necessary paperwork and documentation to complete remediation certification: *Provided*, That a residential property owner may demolish the residential property as an alternative to meeting the remediation standards established by the department.

(b) Once the remediation has been certified complete by the department, the residential property owner and any representative or agent of a residential property owner who neither knew or should have known of the property's illegal use shall be immune from civil liability for action brought for injuries or loss based upon the prior use of the residential property as a clandestine drug laboratory by future owners, renters, lessees or any other person who occupies the residential property.

(c) Any residential property owner who neither knew or should have known of the property's illegal use who chooses to voluntarily and successfully complete the remediation prior to notification by a law-enforcement agency shall have the same immunity from liability as set forth in subsection (b) of this section if the remediation meets the certification standards set forth in legislative rules authorized by this article.

§60A-11-6. Liability for costs of remediation.

Any person convicted pursuant to section four, subsection (d), article ten of this chapter and whose actions also resulted in the necessity of remediation of a clandestine drug laboratory, shall be liable to the person or entity for all costs associated with the remediation of the clandestine drug laboratory. These costs may include attorney's fees and court costs reasonably necessary to bring an action to collect the amount paid for the remediation.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-1. Short title.

The act heretofore created by this article and known and cited as the "West Virginia Crime Reparation Act of 1981" shall henceforth be known and cited as the "West Virginia Crime Victims Compensation Act." Any and all funds existing under the West Virginia crime reparation act of 1981 shall continue for the purposes set forth in this article, notwithstanding the amendments to the name of the act or a redesignation of the special revenue fund in the state treasury as herein provided.

§14-2A-2. Legislative findings; purpose and intent.

The Legislature finds and declares that a primary purpose of government is to provide for the safety of citizens and the inviolability of their property. To the extent that innocent citizens are victims of crime, particularly violent crime, and are without adequate redress for injury to their person or property, this primary purpose of government is defeated. The people of West Virginia are demonstrably peaceful, and, in comparison to the citizens of other states, suffer a lower crime rate. In establishing the West Virginia crime reparation act of 1981, the Legislature stated its findings that the provision of governmental services to prevent crime is not wholly effective and expressed its intent to establish a system of compensation for the victims of crime which would provide a partial remedy for the failure of the state to fully achieve this primary purpose of government.

The Legislature now finds that the system of compensation established by the act as an experimental effort by the Legislature of this state on behalf of its people, after having been reviewed and perfected in its initial stages, should be continued and retained in the legislative branch of government as an expression of a moral obligation of the state to provide partial compensation to the innocent victims of crime for injury suffered to their person or property.

§14-2A-3. Definitions.

As used in this article, the term:

(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim: *Provided*, That the term "victim" does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source, including, but not limited to, assignees, persons holding power of attorney or other persons who hold authority to make or submit claims in place of or on behalf of a victim, a dependent or third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor; and

(5) A person who is a secondary victim in need of mental health counseling due to the person's exposure to the crime committed. An award to a secondary victim may not exceed one thousand dollars.

(6) A person who owns real property damaged by the operation of a methamphetamine laboratory without the knowledge or consent of the owner of the real property.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him or her, from any of the following sources:

(1) The offender, including any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him or her on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions or an instrumentality of two or more states;

(3) Social Security, Medicare and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance; other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state or in any state not having a victim compensation program which by its nature poses a substantial threat of personal injury or death and is punishable by fine or imprisonment or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct also includes an act of terrorism, as defined in 18 U.S.C. §2331, committed outside of the United States against a resident of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, reckless driving or when the person leaves the scene of the accident.

(d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of determining whether an individual received over half of his or her support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself or herself supplied. The term "support" includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term "dependent" includes a child of the victim born after his or her death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term "economic loss" includes a lost scholarship as defined in this section.

(f)(1) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, mental health counseling, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

(2) Allowable expense includes a total charge not in excess of seven thousand dollars for expenses in any way related to funerals, cremations and burials. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(3) Allowable expense also includes:

(A) A charge, not to exceed five thousand dollars, for cleanup of real property damaged by a methamphetamine laboratory or a charge, not to exceed one thousand dollars, for any other crime scene cleanup;

(B) Victim relocation costs, not to exceed one thousand dollars; and

(C) Reasonable travel expenses, not to exceed one thousand dollars, for a claimant to attend court proceedings that are conducted for the prosecution of the offender.

(D) Reasonable travel expenses for a claimant to return a person who is a minor or incapacitated adult who has been unlawfully removed from this state to another state or country, if such removal constitutes a crime under the laws of this state. Reasonable travel expenses to another state for such purpose may not exceed two thousand dollars and reasonable travel expenses for such purpose to another county may not exceed three thousand dollars.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. "Work loss" also includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.

(I) "Dependent's economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(j) "Dependent's replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately

prior to the attempted apprehension. "Victim" shall also include the owner of real property damaged by the operation of a methamphetamine laboratory.

(l) "Contributory misconduct" means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has causal relationship to the criminally injurious conduct that is the basis of the claim and shall also include the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance when the intoxication has a causal connection or relationship to the injury sustained. The voluntary intoxication of a victim is not a defense against the estate of a deceased victim.

(m) "Lost scholarship" means a scholarship, academic award, stipend or other monetary scholastic assistance which had been awarded or conferred upon a victim in conjunction with a post-secondary school educational program and which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.

§14-2A-4. Creation of crime victims compensation fund.

(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any magistrate court or circuit court, shall pay the sum of ten dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any municipal court, shall pay the sum of eight dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c of this code, shall pay a fee in the amount of twenty percent of any fine imposed under that section. This is in addition to any other court costs required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court where the additional costs are imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "Crime Victims Compensation Fund". All moneys collected and received under this article and paid into the state treasury and credited to the crime victims compensation fund in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for the specific purposes of this article, and may not be treated by the auditor and treasurer as part of the general revenue of the state.

(c) Expenditure of moneys in the crime victims compensation fund is authorized from collections.

(d) Moneys in the crime victims compensation fund may be expended for:

(1) The payment of the costs of administration of this article;

- (2) The payment of economic loss awards approved by the court; and
- (3) The payment of attorney and witness fees, allowed pursuant to section nineteen of this article.
- (e) The services of the office of the attorney general, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.
- (f) Any moneys in the crime victims compensation fund may be invested as provided in article six, chapter twelve of this code, with the interest income credited to the crime victims compensation fund.
- (g) All funds in the special economic loss claim payment fund created under the provisions of section twenty of this article prior to the amendments made in that section enacted in the year one thousand nine hundred ninety-nine shall be transferred to the crime victims compensation fund within a reasonable time from the effective date of the amendments.
- (h) All gifts that are received to be used for the purposes of this article shall be deposited into the crime victims compensation fund.

§14-2A-5. Jurisdiction.

Any judge of the court of claims individually, or the court of claims en banc, or any court of claims commissioner appointed pursuant to section six of this article, shall have jurisdiction to approve awards of compensation arising from criminally injurious conduct, in accordance with the provisions of this article, if satisfied by a preponderance of the evidence that the requirements for an award of compensation have been met.

§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

(a) The court of claims, with the approval of the president of the Senate and the speaker of the House of Delegates, may appoint court of claims commissioners to hear claims for awards of compensation and to approve awards of compensation pursuant to the provisions of this article. Each commissioner shall serve at the pleasure of the court of claims and under the supervision of the judges of the court of claims.

(b) The court of claims shall fix the compensation of the court of claims commissioners in an amount not exceeding the compensation for judges of the court of claims. Compensation of judges and commissioners for services performed under this article, and actual expenses incurred in the performance of duties as judges and commissioners under this article shall be paid out of the crime victims compensation fund.

(c) The limitation period of one hundred days in section eight, article two of this chapter pertaining to time served by the judges of the court of claims shall not apply to the provisions of this article.

§14-2A-7. Qualifications of commissioners.

Each commissioner appointed by the court of claims shall be an attorney-at-law, licensed to

practice in this state, and shall have been so licensed to practice law for a period of not less than three years prior to his appointment as commissioner. A commissioner shall not be an officer or an employee of any branch of state government, except in his capacity as commissioner of the court. A commissioner shall not hear or participate in the consideration of any claim in which he is interested personally, either directly or indirectly. When practicable, the commissioners should be selected from different congressional districts and be geographically located, with reference to their counties of residence, to facilitate the appearance of claimants and witnesses at hearings held pursuant to this article.

§14-2A-8. Commissioners' oath of office.

Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath prescribed by section five, article four of the constitution of the state. The oath shall be filed with the clerk.

§14-2A-9. Claim investigators; compensation and expenses; paralegals and support staff.

The court of claims is hereby authorized to hire not more than two claim investigators to be employed within the office of the clerk of the court of claims, who shall carry out the functions and duties set forth in section twelve of this article. Claim investigators shall serve at the pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims. The compensation of claim investigators shall be fixed by the court, and such compensation, together with travel, clerical and other expenses of the clerk of the court of claims relating to a claim investigator carrying out his duties under this article, including the cost of obtaining reports required by the investigator in investigating a claim, shall be payable from the crime victims compensation fund as appropriated for such purpose by the Legislature.

The court of claims is hereby authorized to hire as support staff such paralegal or paralegals and secretary or secretaries to be employed within the office of the clerk of the court of claims, necessary to carry out the functions and duties of this article. Such support staff shall serve at the will and pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims.

§14-2A-10. Filing of application for compensation award; contents.

(a) A claim for an award of compensation shall be commenced by filing an application for an award of compensation with the clerk of the court of claims. The application shall be in a form prescribed by the clerk of the court of claims and shall contain the information specified in subdivisions (1) through (6) of this subsection and, to the extent possible, the information in subdivisions (7) through (10) of this subsection:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant and the relationship of the claimant to the victim;

(2) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

- (3) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;
- (4) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;
- (5) A release authorizing the court of claims, the court of claims commissioners and the claim investigator to obtain any report, document or information that relates to the determination of the claim for an award of compensation;
- (6) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;
- (7) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;
- (8) The total amount of the economic loss that the victim, a dependent or the claimant sustained or will sustain as a result of the criminally injurious conduct, without regard to the financial limitation set forth in subsection (g), section fourteen of this article;
- (9) The amount of benefits or advantages that the victim, a dependent or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;
- (10) Any additional relevant information that the court of claims may require. The court of claims may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

(b) All applications for an award of compensation shall be filed within two years after the occurrence of the criminally injurious conduct that is the basis of the application. Any application so filed which contains the information specified in subdivisions (1) through (6), subsection (a) of this section may not be excluded from consideration on the basis of incomplete information specified in subdivisions (7) through (10) of said subsection if such information is completed after reasonable assistance in the completion thereof is provided under procedures established by the court of claims.

(c) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or who knowingly and willfully participates, or assists in the preparation or presentation of a false or fraudulent application, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of a violation of this section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, in the

discretion of such court. If the convicted person is a state officer or employee, he shall, in addition, forfeit his office or position of employment, as the case may be.

§14-2A-11. Procedure for filing of application.

The clerk of the court of claims shall establish a procedure for the filing, recording and processing of applications for an award of compensation.

§14-2A-12. Investigation and recommendations by claim investigator.

(a) The clerk of the court of claims shall transmit a copy of the application to the claim investigator within seven days after the filing of the application.

(b) The claim investigator, upon receipt of an application for an award of compensation from the clerk of the court of claims, shall investigate the claim. After completing the investigation, the claim investigator shall make a written finding of fact and recommendation concerning an award of compensation. He shall file with the clerk the finding of fact and recommendation and all information or documents that he used in his investigation: **Provided**, That the claim investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

(c) The claim investigator, while investigating the claim, may require the claimant to supplement the application for an award of compensation with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts aiding in the determination of whether, and the extent to which, a claimant qualifies for an award of compensation.

The claim investigator, while investigating the claim, may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him with reports, information, witness statements or other data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable him to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as the result of providing such reports, information, witness statements or other data relating to the criminally injurious conduct to the claim investigator.

Upon motion of any party, court or agency from whom such reports, information, witness statements or other data is sought, and for good cause shown, the court may make any order which justice requires to protect a witness or other person, including, but not limited to, the following: (1) That the reports, information, witness statements or other data not be made available; (2) that the reports, information, witness statements or other data may be made available only on specified terms and conditions, including a designation of time and place; (3) that the reports, information, witness statements or other data be made available only by a different method than that selected by the claim investigator; (4) that certain matters not be inquired into, or that the scope of the claim investigator's request be limited to certain matters; (5) that the reports, information, witness statements or other data be examined only by certain persons designated by the court; (6) that the reports, information, witness statements or other

data, after being sealed, be opened only by order of the court; (7) that confidential information or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a designated manner.

However, in any case wherein the claim investigator has reason to believe that his investigation may interfere with or jeopardize the investigation of a crime by law-enforcement officers, or the prosecution of a case by prosecuting attorneys, he shall apply to the court of claims, or a judge thereof, for an order granting leave to discontinue his investigation for a reasonable time in order to avoid such interference or jeopardization. When it appears to the satisfaction of the court, or judge, upon application by the claim investigator or in its own discretion, that the investigation of a case by the claim investigator will interfere with or jeopardize the investigation or prosecution of a crime, the court, or judge, shall issue an order granting the claim investigator leave to discontinue his investigation for such time as the court, or judge, deems reasonable to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

- (1) Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred and the exact nature of the conduct;
- (2) If the criminally injurious conduct was reported to a law-enforcement officer or agency, the date on which the conduct was reported and the name of the person who reported the conduct; or, the reasons why the conduct was not reported to a law-enforcement officer or agency; or, the reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-two hours after the conduct occurred;
- (3) The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;
- (4) If the claim investigator is recommending that an award be made, a specific itemization of the economic loss that was sustained by the victim, the claimant or a dependent as a result of the criminally injurious conduct;
- (5) If the claim investigator is recommending that an award be made, a specific itemization of any benefits or advantages that the victim, the claimant or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;
- (6) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;
- (7) Any information which might be a basis for a reasonable reduction or denial of a claim because of contributory misconduct of the claimant or of a victim through whom he or she claims;

(8) Any additional information that the claim investigator deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether an award of compensation should be made to the claimant and the amount of the award;

(2) If the claim investigator recommends that an award not be made to the claimant, the reason for his decision.

(f) The claim investigator shall file his finding of fact and recommendation with the clerk within six months after the filing of the application: **Provided**, That where there is active criminal investigation or prosecution of the person or persons alleged to have committed the criminally injurious conduct which is the basis for the claimant's claim, the claim investigator shall file his finding of fact and recommendation within six months after the first of any final convictions or other final determinations as to innocence or guilt, or any other final disposition of criminal proceedings. In any case, an additional time period may be provided by order of any court of claims judge or commissioner upon good cause shown.

§14-2A-13. Notice to claimant of claim investigator's recommendation; evaluation of claim by judge or commissioner.

(a) The clerk of the court of claims, upon receipt of the claim investigator's finding of fact and recommendation, shall forward a copy of the finding of fact and recommendation to the claimant with a notice informing the claimant that any response, in the form of objections or comments directed to the finding of fact and recommendation, must be filed with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day period, the clerk shall assign the claim to a judge or commissioner of the court.

(b) The judge or commissioner to whom the claim is assigned shall review the finding of fact and recommendation and any response submitted by the claimant and, if deemed appropriate, may request the claim investigator to comment in writing on the claimant's response. The judge or commissioner shall, within forty-five days after assignment by the clerk, evaluate the claim without a hearing and either deny the claim or approve an award of compensation to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The judge or commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or

agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the 72-hour period.

(c) The judge or commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation or reconsider a claim already approved.

(e) A judge or commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county or regional jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the Clerk of the Court of Claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: *Provided*, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) (1) Except in the case of death, or as provided in subdivision (2) of this subsection, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed twenty-five thousand dollars in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed fifty thousand dollars in the aggregate.

(2) In the event the victim's personal injuries are so severe as to leave the victim with a disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U.S.C. §423, the court may award an additional amount, not to exceed one hundred thousand dollars, for special needs attributable to the injury.

(h) If an award of compensation of five thousand dollars or more is made to a minor, a guardian shall be appointed pursuant to the provisions of article ten, chapter forty-four of this code to manage the minor's estate.

§14-2A-15. Hearings.

(a) If either the claim investigator or the claimant disagrees with the approval of an award or the denial of a claim in the summary manner set forth in the preceding sections of this article, the claim investigator or the claimant, or both, shall file with the clerk a request for hearing. Such request shall be filed within twenty-one days after notification by the judge or commissioner of his decision.

(b) Upon receipt of a request for hearing, the clerk shall place the claim upon the regular docket of the court for hearing, shall advise the attorney general and the claimant of the receipt of the request and docketing of the claim, and shall request the attorney general to commence negotiations with the claimant.

(c) During the period of negotiations and pending hearing, the attorney general, shall, if possible, reach an agreement with the claimant regarding the facts upon which the claim is based so as to avoid the necessity for the introduction of evidence at the hearing. If the parties are unable to agree upon the facts, an attempt shall be made to stipulate the questions of fact in issue.

(d) The hearing held in accordance with this section shall be before a single judge or commissioner to whom the claim has not been previously assigned. Hearings before a judge or commissioner may, in the discretion of such hearing officer, be held at such locations throughout the state as will facilitate the appearance of the claimant and witnesses.

(e) The hearing shall be conducted so as to disclose all material facts and issues. The judge or commissioner may examine or cross-examine witnesses. The judge and commissioner may call witnesses or require evidence not produced by the parties; may stipulate the questions to be argued by the parties; and may continue the hearing until some subsequent time to permit a more complete presentation of the claim.

(f) After the close of the hearing the judge or commissioner shall consider the claim and shall conclude his determination, if possible, within thirty days.

(g) The court shall adopt and may from time to time amend rules of procedure to govern proceedings before the court in accordance with the provisions of this article. The rules shall be designed to assure a simple, expeditious and inexpensive consideration of claims. The rules shall permit a claimant to appear in his own behalf or be represented by counsel and provide for interests of the state to be represented by the attorney general in any hearing under this section at no additional cost to the fund or the state.

Under its rules, the court shall not be bound by the usual common law or statutory rules of evidence. The court may accept and weigh, in accordance with its evidential value, any information that will assist the court in determining the factual basis of a claim.

§14-2A-16. Evidence.

(a) There is no privilege, except the privilege arising from the attorney-client relationship, as to communications or records that are relevant to the physical, mental or emotional condition of the claimant or victim in a proceeding under this article in which that condition is an element.

(b) If the mental, physical or emotional condition of a victim or claimant is material to a claim for an award of compensation, the court, judge or commissioner may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown and upon notice to the person to be examined and to the claimant and the claim investigator. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person who performs the examination or autopsy to file with the clerk of the court of claims a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the clerk of the court of claims shall furnish him a copy of the report. If the victim is deceased, the clerk of the court of claims, on request, shall furnish the claimant a copy of the report.

(c) The court, or a judge or commissioner thereof, may order law-enforcement officers employed by the state or any political subdivision thereof to provide it or the claim investigator with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of compensation.

(d) The court, or a judge or commissioner thereof, may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(e) The court, a judge or commissioner thereof, or the claim investigator, in a claim arising out of a violation of article eight-b, chapter sixty-one of this code, shall not request the victim or the claimant to supply any evidence of specific instances of the victim's activity, or reputation evidence of the victim's sexual activity, unless it involves evidence of the victim's past sexual activity with the offender, and then only to the extent that the court, the judge, the commissioner or the claim investigator finds that the evidence is relevant to a fact at issue in the claim.

(f) Notwithstanding any provision of this code to the contrary relating to the confidentiality of juvenile records, the court of claims, a judge or commissioner thereof, or the claim investigator shall have access to the records of juvenile proceedings which bear upon an application for compensation under this article. The court of claims, a judge or commissioner thereof, and the claim investigator, shall, to the extent possible, maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of compensation, the court, judge or commissioner may make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his powers and duties, the claim investigator may petition the court of claims for an appropriate order, including an order authorizing the investigator to take the depositions of witnesses by oral examination or written interrogatory, but the court of claims shall not find a person in contempt for refusal to submit to a mental or physical examination.

§14-2A-18. Effect of prosecution or conviction of offender.

The court, or a judge or commissioner thereof, may approve an award of compensation whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction or certiorari is pending, or a rehearing or new trial has been ordered.

The court, or a judge or commissioner thereof, shall suspend, upon a request of the claim investigator, the proceedings in any claim for an award of compensation pending disposition of a criminal prosecution that has been commenced or is imminent.

§14-2A-19. Attorney and witness fees.

(a) By separate order, the court, or a judge or commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered and reimbursement for reasonable and necessary expenses actually incurred shall be paid from the crime victims compensation fund to the attorney representing a claimant in a proceeding under this article at the same rates as set forth in section thirteen-a, article twenty-one, chapter twenty-nine of this code. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of compensation, and attorney's fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section. In no event may a prosecuting attorney or assistant prosecuting attorney represent any victim seeking compensation under this article.

(b) Each witness called by the court to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to be paid from the crime victims compensation fund.

§14-2A-19a. Effect on physician, hospital and healthcare providers filing an assignment of benefits; tolling of the statute of limitations.

(a) As part of the order, the court, or a judge or commissioner thereof, shall determine whether fees are due and owing for health care services rendered by a physician, hospital or other health care provider stemming from an injury received as defined under this article, and further, whether or not the physician, hospital or other health care provider has been presented an assignment of benefits, signed by the crime victim, authorizing direct payments of benefits to the health care provider. If such fees are due and owing and the health care provider has presented a valid assignment of benefits, the court, or a judge or commissioner thereof, shall determine the amount or amounts and shall cause such reasonable fees to be paid out of the amount awarded the crime victim under this article directly to the physician, hospital or other health care provider. The requirements of this section shall be applicable to, and any such unpaid fees shall be determined and payable from, the awards made by the Legislature at regular session, one thousand nine hundred eighty-seven, and subsequently: *Provided*, That when a claim is filed under this section, the court shall determine the total damages due the crime victim, and where the total damages exceed the maximum amount which may be awarded under this article, the

amount paid the health care provider shall be paid in the same proportion to which the actual award bears to the total damages determined by the court. In any case wherein an award is made which includes an amount for funeral, cremation or burial expenses, or a combination thereof, the court shall provide for the payment directly to the provider or providers of such services, in an amount deemed proper by the court, where such expenses are unpaid at the time of the award.

(b) If the health care provider has filed an assignment of benefits, the provider shall aid the crime victim in the development of his or her claim by providing the court with the amount of such fees as well as the amount of any portion of the fees paid the provider by the crime victim directly or paid the provider for the crime victim by a collateral source.

(c) Whether or not a health care provider has filed an assignment of benefits, the court shall disclose no information regarding the status of the claim to the provider: *Provided*, That the court shall promptly notify the provider of the final disposition of the claim, if the provider is known to the court.

(d) Whenever a person files a claim under this article, the statute of limitations for the collection of unpaid fees paid for such health care services shall be tolled during the pendency of the claim before the court.

§14-2A-20. Budget preparation; procedure for payment of claims.

(a) The legislative auditor shall submit to the department of administration, on or before the twentieth day of November of each year, an anticipated budget for the crime victims compensation program provided in this article for the next fiscal year, which shall include:

- (1) An estimate of the balance and receipts anticipated in the crime victims compensation fund;
- (2) Amounts anticipated to be sufficient for the payment of all administrative expenses necessary for the administration of this article; and
- (3) Amounts anticipated to be sufficient for the payment of awards, attorney fees, witness fees and other authorized fees, costs or expenses that may arise under this article during the next fiscal year.

(b) The governor shall include in his or her proposed budget bill and revenue estimates the amounts submitted by the legislative auditor under subsection (a) of this section.

(c) The clerk shall certify each authorized award and the amount of the award and make requisition upon the crime victims compensation fund to the auditor. Notwithstanding any provision of chapter twelve of this code to the contrary, the auditor shall issue a warrant to the treasurer without further examination or review of the claim if there is a sufficient unexpended balance in the crime victims compensation fund.

(d) The court may provide that payment be made to a claimant or to a third party for economic losses of the claimant and the order may provide an award for the payment for actual economic losses which are prospective as well as those which have already been incurred.

§14-2A-21. Annual report of court of claims.

The court of claims shall prepare and transmit annually to the governor and the Legislature a report of the activities of the court of claims under this article. The report shall include the number of claims filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied; the balance in the crime victims compensation fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the court of claims, compensation of judges, commissioners and court personnel, the amount awarded as attorneys' fees.

§14-2A-22. State's subrogation to claimant's rights.

If an award of compensation is made under the provisions of this article and is not reduced on account of the availability of payment by a collateral source, the state, upon the payment of the award or a part of the award, shall be subrogated to all of the claimant's rights to receive or recover benefits or advantages for economic loss for which an award of compensation was made from such source if it were a collateral source or would be a collateral source if it were readily available to the victim or claimant. The claimant may sue the offender for any damages or injuries caused by the offender's criminally injurious conduct and not compensated for by an award of compensation. The claimant may join with the attorney general as co-plaintiff in any action against the offender. All moneys that are collected by the state pursuant to its rights of subrogation as provided in this section shall be deposited in the crime victims compensation fund.

§14-2A-23. Subrogation rights of collateral source.

Subrogation rights which a collateral source may have shall not extend to a recovery from a claimant of all or any part of an award made under this article. A collateral source may not apply, in the name of a claimant or otherwise, for an award of compensation based upon injury to a claimant to whose rights the collateral source may be subrogated.

§14-2A-24. Award not subject to execution or attachment; exceptions.

An award is not subject to execution, attachment, garnishment or other process, except that, upon receipt of an award by a claimant, the part of the award that is for allowable expense is not exempt from such action by a creditor to the extent that he provides products, services or accommodations the costs of which are included in the award and the part of the award that is for work loss shall not be exempt from such action to secure payment of alimony, maintenance or child support.

§14-2A-25. Publicity.

(a) The clerk of the court of claims shall prepare an information brochure for the benefit of the general public, outlining the rights of claimants and procedures to be followed under this article. Copies of such brochure shall be distributed to law-enforcement agencies in the state, and be made available to other interested persons.

(b) Any law-enforcement agency that investigates an offense committed in this state involving personal injury shall make reasonable efforts to provide information to the victim of the offense and his dependents concerning the availability of an award of compensation and advise such

persons that an application for an award of compensation may be obtained from the clerk of the court of claims.

§14-2A-26. Rules and regulations.

(a) The court of claims may promulgate rules and regulations to implement the provisions of this article.

(b) The court of claims shall promulgate rules and regulations to govern the award of compensation to the spouse of, person living in the same household with, parent, child, brother or sister of the offender or his accomplice in order to avoid an unjust benefit to or the unjust enrichment of the offender or his accomplice.

§14-2A-27. Application of article.

The provisions of this article shall not apply to any injury or death resulting from criminally injurious conduct which occurred on or before the thirty-first day of December, one thousand nine hundred eighty-one.

§14-2A-28. Retroactive effect of amendments.

Amendments made to the provisions of this article during the regular session of the Legislature in the year one thousand nine hundred eighty-four, shall be of retroactive effect to the extent that such amended provisions shall apply to all cases pending before the court of claims on the effective date of the act of the Legislature which effects such amendment.

§14-2A-29. Retroactive effect of amendments.

Amendments made to the provisions of this article during the regular session of the Legislature in the year one thousand nine hundred ninety-two are retroactive in effect to the extent that the amended provisions apply to all cases wherein the criminally injurious conduct occurred after the thirty-first day of December, one thousand nine hundred ninety-one.