

Chapter 12: Victims' Compensation

Section 12A: Victims' Compensation

Lana Grandon, J.D. Assistant Attorney General

Victim Advocacy Division, Office of Attorney General

KRS Chapter 346 contains the Kentucky statutes providing for the compensation of crime victims. KRS 346.185 establishes the Crime Victims' Compensation Fund within the State Treasury. The fund consists of moneys from General Assembly appropriations, the federal government, payments by defendants and any other public or private source. A payment of twenty dollars (\$20) must be imposed on all defendants who plead or are found guilty of a crime as defined in KRS 500.080(2). The payment is deposited in the fund. The payment may not be suspended or probated and must be collected in its entirety.ⁱ

For purposes of KRS Chapter 346 "victim" means "a needy person who suffers personal physical or psychological injury or both from a criminal act in Kentucky as a result of (1) Criminally injurious conduct;"ⁱⁱ (2) A good faith effort to prevent criminally injurious conduct; or (3) A good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."ⁱⁱⁱ Victim also means "a resident who is a victim of a crime occurring outside this state if: 1. The crime would be compensable had it occurred inside this state; and 2. The crime occurred in a state which does not have a crime victim compensation program, for which the victim is eligible as eligibility is set forth in KRS 346.050" and "a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. sec. 2331, committed outside the United States."^{iv}

A victim of criminally injurious conduct, a surviving spouse, parent or child of a victim of criminally injurious conduct who died as a direct result of such conduct, any other person dependant for his principal support upon a victim of criminally injurious conduct who died as a direct result of such crime or any person who is legally responsible for the medical expenses or funeral expenses of a victim are eligible for awards pursuant to KRS Chapter 346.^v KRS 346.050(2) also provides that "no victim or dependent shall be denied compensation solely because he is a relative of the offender or was living with the offender as a family or household member at the time of the injury or death. However, the board may award compensation to a victim or dependant who is a relative, family or household member of the offender only if the board can reasonably determine the offender will not receive significant economic benefit or unjust enrichment from the compensation." This provision is of particular significance in domestic violence cases where the victim often may be a relative of or living with the offender.

Any claim filed must be filed in the office of the Crime Victims' Compensation Board, in person or by mail, on forms supplied by the board. A claim may be filed by any person eligible to receive an award pursuant to KRS 346.050. A claim must be filed not later than five (5) years after the occurrence of the criminally injurious conduct upon which such claim is based or not later than five (5) years after the death of the victim. The board, however, may extend the time

for filing in a particular case if the interest of justice so requires. When a claim is filed the board is required to notify the prosecuting attorney^{vi} in the jurisdiction where the crime is alleged to have occurred. Within ten (10) days after receiving notice the prosecuting attorney may give notice to the board that a prosecution is pending and may request that any action by the board be deferred until the criminal prosecution has been concluded. In such cases the board is required to defer all proceedings, except for the granting of emergency awards,^{vii} until the prosecuting attorney notifies the board that the prosecution has been concluded^{viii}.

Each claim that is accepted for filing is assigned to an investigator for an investigation. The investigator is required to examine the papers filed in support of the claim and the validity of the claim and shall include in the investigation an examination of police, court and official records and reports concerning the crime. The board may order a victim or claimant to submit to a mental or physical examination and may order an autopsy of a deceased victim if the mental, physical or emotional condition of the victim or claimant is material to the claim. All claims must be investigated and determined including those in which the alleged perpetrator has not been apprehended, prosecuted or convicted. Upon completion of the investigator's report the assigned board member may decide in the claimant's favor based upon the papers filed and the investigator's report. If within 30 days of the assignment of the claim the board member is unable to decide the claim a hearing is ordered. After the hearing, the board member to whom the claim is assigned must issue a recommended order either granting an award or denying the claim. After reviewing the recommendation and any exceptions filed thereto the board will issue a final order based upon the majority vote. The final order may be appealed by filing a petition for judicial review in Franklin Circuit Court.^{ix}

In order to make an award the board must find that :

- (a) Criminally injurious conduct occurred;
- (b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and
- (c) Police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.^x

The board is required to deny an award "if the board or board member . . . finds that the claimant will not suffer serious financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance" pursuant to KRS Chapter 346.^{xi} If the board finds that a victim or claimant has not fully cooperated with the law enforcement agency the board must deny, reconsider or reduce the award.^{xii}

Awards may not exceed \$25,000 and shall not exceed the amount of out-of-pocket expenses.^{xiii} Awards must be "reduced by the amount of any payments received or to be received by the claimant as a result of the injury from the following sources: (a) From or on behalf of the person who committed the crime; (b) Under insurance programs mandated by law; (c) From public

funds; (d) Under any contract of insurance wherein the claimant is the insured or beneficiary; and (e) As an emergency award pursuant to KRS 346.120.^{xiv} In determining the amount of the award, the board or board member shall determine "whether because of his conduct, the victim of such crime contributed to the infliction of his injury, and . . . shall reduce the award or reject the claim altogether. . . The board or board members may request that the county attorney or Commonwealth's attorney or both state whether in their opinion, the victim suffered injuries as the result of a crime and has cooperated with the prosecution and law enforcement authorities. . .^{xv} No award for loss of earnings or support shall exceed one hundred fifty dollars (\$150) per week and an award for funeral and burial expenses shall not exceed five thousand dollars (\$5,000). Awards may not be made for any type of property loss or damage. Replacement of eyeglasses and other corrective lenses shall, however, be included in any award if they were damaged or broken during the crime.^{xvi}

ⁱ KRS 346.185.

ⁱⁱ Criminally injurious conduct means "conduct that occurs or is attempted in this jurisdiction, poses a substantial threat of personal physical, psychological injury or death, and is punishable by fine, imprisonment, or death. Criminally injurious conduct shall include an act of terrorism, as defined in 18 U.S.C. sec. 2331, committed outside of the United States against a resident of Kentucky. Acts which, but for the insanity or mental irresponsibility or lack of capacity of the perpetrator would constitute criminal conduct shall be deemed to be criminally injurious conduct. The operation of a motor vehicle, motorcycle, train, boat, aircraft, or other vehicle in violation of law does not constitute a criminally injurious conduct unless the injury or death was intentionally inflicted or involved a violation of KRS 189A.010, driving under the influence.

ⁱⁱⁱ KRS 346.020.

^{iv}3. KRS 346.020.

^v KRS 346.050(1).

^{vi} The prosecuting attorney includes the United States attorney, the Commonwealth's attorney and the county attorney.

^{vii} KRS 346.120 provides for the payment of an emergency award pending a final decision in a case if it appears to the board member to who the claim is assigned that the "claim is one with respect to which an award probably will be made" and "undue hardship will result to the claimant if immediate payment is not made." Emergency awards may not exceed five hundred dollars (\$500), must be deducted from any final award made to the claimant and any excess of the amount of an emergency award over the amount of the final award shall be repaid by the claimant.

^{viii} KRS 346.060.

^{ix} KRS 346.080.

^x KRS 346.130(1).

^{xi} KRS 346.140(3).

^{xii} KRS 346.130(2).

xiii KRS 346.130.

xiv KRS 346.140.

xv KRS 346.140(2).

xvi KRS 346.130.