

West Virginia Crime Victims Compensation Fund

This module offers information on what expenses are eligible for compensation through the West Virginia Crime Victims Compensation Fund, the basic process for filing a claim for compensation, and where to refer victims for assistance in filing a claim.¹

Key Points

- The West Virginia Crime Victims Compensation Fund provides compensation to victims of crime who have suffered personal injury and have incurred out-of-pocket losses as a result of a criminal act.
- West Virginia residents are eligible to file a claim with the Crime Victims Compensation Fund if they are: victims of a crime that caused personal injury and out-of-pocket losses; dependents of a deceased victim of a crime; victims of terrorism overseas; or victims of crime in another state that does not have a compensation program. To be eligible, the crime must be reported to law enforcement within 72 hours (with possible exceptions). The victim must document expenses from the injury inflicted by the crime and fully cooperate with law enforcement. A claim must be filed within two years.
- To file a claim, an application must be completed and submitted to the Crime Victims Compensation Fund. There is no fee to file and an attorney is not required. Victim advocates at rape crisis centers are trained to assist victims in filing claims.
- Once a claim has been filed, a claim investigator reviews the case, creates a Finding of Fact and Recommendation (FFR) and sends a copy to the victim. The victim may file a response to the FFR within 30 days. A judge then reviews the FFR, all case documents and the victim's response, if any, and makes a decision. A copy of the decision is sent to the victim. If the victim or claim investigator disagrees with the decision, they have 30 days to file an appeal. The case will then be transferred to another judge and the victim has 21 days to request a hearing. At the hearing, the victim and other parties may have the opportunity to testify and initial findings are discussed. The court then determines if there is sufficient evidence to award the victim benefits or if the claim will be denied.
- Sexual assault victims can have a forensic medical exam conducted without immediately reporting the crime to law enforcement. If they choose not to report, they are not eligible for compensation through the Crime Victims Compensation Fund. Because there is no statute of limitations on sexual assault, they can later report the crime to law enforcement. If they then file a claim and a judge finds that the victim can provide good cause as to why there was a delay in reporting past the 72 hour eligibility time period, the claim could be approved. The determination is left to the discretion of the judge under the parameters of the state statute.

B7. West Virginia Crime Victims Compensation Fund

Purpose

In addition to physical injury and trauma, sexual victimization can result in both out-of-pocket expenses and loss of income. If the crime is reported to law enforcement, victims may be eligible for compensation for those expenses through the West Virginia Crime Victims Compensation Fund. In the event that a client discloses victimization, service providers need to have a basic understanding of what expenses are eligible for compensation through the Crime Victims Compensation Fund, the basic process for filing a claim for compensation, and where to refer the victim for assistance in filing a claim.² This knowledge will enable service providers to better assist victims in accessing all possible resources to support them in the recovery process.

Objectives

Those who complete this module will be able to:

- Explain the purpose of the West Virginia Crime Victims Compensation Fund;
- Understand how a claim is processed; and
- Provide information to victims on the Crime Victims Compensation Fund.

Preparation

Download a copy of the Crime Victims Compensation Fund Application Form through <http://www.legis.state.wv.us/Joint/victims/main.cfm>.³

CORE KNOWLEDGE

What is the West Virginia Crime Victims Compensation Act?

The Crime Victims Compensation Act was created in 1981 and enacted on January 1, 1982 (*WVC§14-2A*). Its purpose was to establish “a fund which pays certain compensation and medical benefits to innocent victims of crime.”

What is the West Virginia Crime Victims Compensation Fund?

The West Virginia Crime Victims Compensation Fund is a program administered by the state’s Court of Claims. The program is funded through court fees collected from persons who have been convicted of or plead guilty to a misdemeanor or felony (with the exception of non-moving traffic violations). The program receives \$50 per felony, \$8 per misdemeanor, \$10 for other offenses, 20 percent of assessed fines in drunk-driving cases and 60 percent of the state’s annual Victims of Crime Act grant. The Crime Victims Compensation Fund provides compensation to innocent victims of crime who have *suffered personal injury and who have incurred out-of-pocket losses* as a result of a criminal act.

Who is eligible?

- A WV resident who is an innocent victim of a crime that caused personal injury and out-of-pocket losses
- A dependent of a deceased victim of a crime
- A WV resident who is a victim of terrorism overseas
- A resident of WV who was a victim of a crime in another state that does not have a compensation program

Who is not eligible?

- Persons who commit a crime
- Persons who are injured while they are incarcerated
- Persons who do not cooperate with law enforcement or claim investigators from the Crime Victims Compensation Fund

What is required?

- The crime must have been reported to law enforcement within 72 hours.
- The victim must have documented expenses from the personal injury inflicted by the crime.
- The victim must fully cooperate with law enforcement officials.
- A claim must be filed with the WV Crime Victims Compensation Fund within 2 years.
Exceptions:
 - o If the victim is a child, the child has until her 20th birthday to file a claim.
 - o Extended time for filing may be granted if there is “good cause” for filing after the specified time frames.

What are the benefits?

The West Virginia Crime Victims Compensation Fund is a “payer of last resort,” which means it can be accessed once all other resources have been exhausted. Other sources that victims may access include: private insurance (medical, optical and dental), employee sick and annual leave benefits, unemployment benefits, court ordered restitutions, life insurance over \$25,000, auto insurance, public program benefits and civil lawsuit recoveries. The Crime Victims Compensation Fund does not cover personal property (except medically necessary items such as eyeglasses and hearing aids) and lost wages for individuals other than the victim. Each claim is handled on a case-by-case basis. If a victim’s expenses are paid by the Crime Victims Compensation Fund and the victim later receives compensation from another source, the victim is responsible for notifying the Crime Victims Compensation Fund and may be obligated to repay amounts for which it was later determined she was not eligible.

Maximum awards:

- \$25,000 in personal injury cases
- \$50,000 in death cases, which includes \$7,000 for funeral/burial
- \$100,000 in permanent disability cases (in addition to the \$25,000)

Compensable expenses:

- Medical expenses
- Mental health counseling
- Mental health counseling for secondary victims up to \$1,000
- Lost earnings
- Funeral/burial costs up to \$7,000
- Relocation up to \$1,000
- Travel to a medical treatment facility, to attend criminal proceedings or to return a minor from out-of-state or out-of-country
- Crime-scene cleanup (landlords)
- Rehabilitation
- Attorney fees (public defender rates)
- Replacement services, to do what victims would normally do themselves but no longer can because of the crime. (Examples: A victim owned a store and worked 60 hours per week. Due to his injury, he cannot work and has to hire someone to complete the work he did in those 60 hours. The Crime Victims Compensation Fund could pay for his replacement. If a victim was not able to care for herself because of a crime-related injury, the Crime Victims Compensation Fund could pay the costs of an in-home nurse. Services can be paid until the maximum dollar amount set for this category is reached.)

Test Your Knowledge on Crime Victims Compensation Fund Eligibility

1. *A 23-year-old woman with no health insurance was sexually assaulted in her home. She is receiving therapy and was prescribed an antidepressant medication for PTSD (post-traumatic stress disorder). Could she be eligible for benefits to cover the costs of therapy and medication?*
2. *A 50-year-old woman who is legally blind was sexually assaulted and, as a result, her eyeglasses were broken. Her vision insurance will only cover 50 percent of the total cost to replace her eyeglasses. Could she be eligible for benefits?*
3. *If a 5-year-old was present when his mother was raped and he is now suffering from anxiety due to the traumatic incident, could he be eligible for mental health benefits?*

Answers: “Yes” to all. However, these cases are dependent upon the crime having been

reported to law enforcement and eligibility status subject to individual case findings by the Crime Victims Compensation Fund.

How do you file a claim?

There is no fee to file a claim and an attorney is not required. Victim advocates at rape crisis centers are trained to assist victims in filing claims. However, if a victim seeks the services of an attorney *and the claim is approved*, reasonable attorney fees can be paid by the Crime Victims Compensation Fund.

If a victim is uncertain about the eligibility of any aspect of a claim, additional information may be obtained by calling the West Virginia Crime Victims Compensation Fund. An application can be downloaded through <http://www.legis.state.wv.us/Joint/victims/main.cfm> or is available at the local prosecuting attorney's office. Below is the related contact information:

WV Crime Victims Compensation Fund
1900 Kanawha Blvd. East, Room W-334, Charleston, WV 26305-0610
Phone: 304-347-4850, 877-562-6878 (in state)
Email: ctclaims@mail.wvnet.edu

How is the claim processed?

Once a claim has been filed, the Crime Victims Compensation Fund assigns a claim investigator to review the case. Based on the information gathered during the investigation, the claim investigator files a "Finding of Fact and Recommendation," or FFR, and a copy is sent to the victim. The victim may file a response to the FFR within 30 days. One of the state's three Court of Claims' judges then will review the FFR, all file documents, and the victim's response, if any. The judge will then make a decision and a copy of the order will be sent to the victim. If the victim or claim investigator disagrees with the decision rendered by the judge from the Court of Claims, they have 30 days to file an appeal. The case will then be transferred to another judge and the victim has 21 days to request a hearing. When scheduling a hearing date, the judge will make every effort to accommodate the victim by choosing a location that is local and convenient. At the hearing, the victim and other parties may have the opportunity to testify and the initial findings will be discussed. The court will determine if there is sufficient evidence to award the victim benefits or if the claim will be denied.

Are there special eligibility concerns for sexual assault victims?

Sexual assault victims can face unique circumstances regarding eligibility for the Crime Victims Compensation Fund. They can have a forensic medical exam conducted without reporting the crime to law enforcement. *Having a forensic medical exam conducted does not establish that a crime occurred.* Therefore a victim may not be eligible for compensation through the Crime Victims Compensation Fund unless the crime is reported to law enforcement. However, since there is no statute of limitations regarding sexual assault, a victim could later report the crime to law enforcement. *If the Court of Claims' judge finds that the victim can provide good cause as to why there was a delay in reporting the crime past the 72 hour eligibility time period, the claim could be approved.* The determination is left to the discretion of the judge under the parameters of the state statute. (See *Sexual Violence 101. West Virginia Laws on Sexual*

Test Your Knowledge

Refer to the pages in this module as indicated to find the answer to each question.

1. What agency administers the West Virginia Crime Victims Compensation Fund? How is it funded? *See page B7.2.*
2. What are the eligibility criteria to file a claim with the Fund? *See page B7.3.*
3. How many years after the crime occurred can a claim be filed? *See page B7.3.*
4. What expenses are eligible for reimbursement? What are the maximum awards? *See page B7.4.*
5. Is there a fee to file a claim? *See page B7.5.*
6. Who can assist victims in filing claims? Is an attorney needed to file? *See page B7.5.*
7. Once a claim is filed, what is the process for making a decision? What happens if the victim or claim investigator disagrees with the decision? *See page B7.5.*
8. Are there exceptions for sexual assault victims to the standard time period in which crimes must be reported to be eligible for compensation? *See page B7. 5.*

Project partners welcome the non-commercial use of this module to increase knowledge about serving sexual violence victims with disabilities in any community, and adaptation for use in other states and communities as needed, without the need for permission. We do request that any material used from this module be credited to the West Virginia Sexual Assault Free Environment (WV S.A.F.E.) project, a partnership of the West Virginia Foundation for Rape Information and Services, the Northern West Virginia Center for Independent Living and the West Virginia Department of Health and Human Resources (2010). Questions about the project should be directed to the West Virginia Foundation for Rape Information and Services at www.fris.org.

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¹Partnering agencies refer to the persons they serve as “clients,” “consumers” and “victims.” For convenience, the terms “victims” and “clients” are primarily used in this module. Also note that the terms “sexual violence” and “sexual assault” generally are used in this module to encompass sexual assault, sexual abuse and other forms of sexual violence.

²Although males and females are both victimized by sexual violence, most reported and unreported cases are females (see endnotes in the *Toolkit User’s Guide* for a full citation). Therefore, in this module, victims may be referred to as female and examples provided often have female victims.

³Note that online documents referenced in this module were available at the links provided at the time the module was written. It is suggested you check the sites for any updates or changes. If you experience difficulty accessing the documents via the links, another option for locating documents is doing a web search using titles.