

HAWAII ADMINISTRATIVE RULES

TITLE 23

DEPARTMENT OF PUBLIC SAFETY

SUBTITLE 4

CRIME VICTIMS COMPENSATION COMMISSION

CHAPTER 605

CRIME VICTIMS COMPENSATION

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\$23-605-1 Confidentiality. Disclosure of information relating to the psychiatric, medical, personal history, and law enforcement or criminal investigation reports shall not be permitted unless required by court order or otherwise required by state or federal statute. [Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §92F-22)

\$23-605-2 Definitions. The definitions in this chapter shall follow the definitions that are in

chapter 351, Hawaii Revised Statutes. In addition, the definitions as used in this chapter are as follows:

"Administrative decision" means a decision that is adjudicated by the executive director.

"Administrative limit" means the established maximum compensation benefit as established by the commission members that may be paid.

"Appeal from administrative decision hearing" means the hearing conducted by the commission members that is the result of an appeal from an administrative decision.

"Applicant" means a person who has filed a claim or a person who is legally authorized to act on behalf of a child or dependent.

"Compensation" means restitution for losses directly related to the crime that can be substantiated and which may include medical, therapy, funeral, lost earnings, and other losses.

"Good cause" means a determination that the applicant was unable to file an application within 18 months after the date of the incident or report the incident to the police without undue delay due to a mental, physical or legal impairment. Good cause may not be established by ignorance of the law, incarceration, or negligent failure to ascertain the facts giving rise to a claim.

"Good Samaritan claim" means a claim brought pursuant to section 351-51, Hawaii Revised Statutes.

"Incurred expenses" means any expense actually or reasonably incurred as the result of a crime under chapter 351.

"Law enforcement officer" means any public servant, whether employed by the State or subdivisions thereof or by the United States, vested by law with a duty to maintain public order, or to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.

"Minor" shall have the same definition as child in section 351-2, Hawaii Revised Statutes.

"Nontraditional medicine" means massage therapy, acupuncture, cultural or traditional-based healing.

"Private citizen" means any natural person other than a law enforcement officer actively engaged in the performance of official duties whether off or on duty.

"Responsible person" means a person who has the legal responsibility to maintain or support the victim.

"Service provider" means an individual or institution that provides legal, medical, dental, therapeutic, funeral or other crime related services.

"Undue delay" means 72 hours, provided that upon a showing of good cause, the commission may consider a police report made beyond this time period.

[Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-2)

§23-605-3 Statement of nondiscrimination. It is the policy of the crime victim compensation commission that no person shall, on the grounds of race, color, religion, sex, national origin, age, handicap, sexual orientation, marital status or political affiliation be excluded from participation in or be subjected to discrimination when making a claim for compensation.

[Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-68)

§23-605-4 Applications and other documents. (a) Any person who seeks compensation under this chapter shall file a written application with the commission on an official application form. All documents may be sent by mail, electronically transmitted or hand-carried to the commission office. The postmark or the date the electronic transmittal or hand-carried documents are received shall be deemed to be the date of filing.

(b) All applications and other documents must be typewritten, or legibly printed and signed in ink by the party submitting the same. In cases where documents have been electronically transmitted, an original signed application shall also be submitted. The original signature of the person signing the document or application constitutes a certification that the person read the document, and that to the best of the person's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading.

(c) The commission may require statements of the facts surrounding the claim and may require certification of all supporting statements. The statements may include, among other things, information regarding recovery from other sources, amount of expenses incurred, dates of hospitalization or medical treatment and statements about the incident and such other information as the commission may request.

[Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-68)

§23-605-5 Compensation. An award under chapter 351, Hawaii Revised Statutes, shall not exceed the statutory limit. Payment of compensation to the dependents of the deceased victim shall not, in the aggregate, exceed the statutory limit. Compensation shall only be paid for those types of losses and injuries recognized under chapter 351, Hawaii Revised Statutes. [Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §§351-51, 351-62)

§23-605-6 Eligibility for compensation. (a) Compensation may be paid to those persons identified in subsection (b) when a person is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State, victims of Federal crimes occurring within the State; a resident of this State who is injured or killed in another state by any act or omission within the description of any of the crimes specified in section 351-32 in a state not having an eligible crime victim compensation program or a person who is a resident of this State who is injured or killed by an act of terrorism occurring outside the United States, as defined in United States Code section 2331, but does not include a law enforcement officer who is actively engaged in the performance of official duties whether on or off duty.

(b) Compensation may be ordered to those persons that are specified in statute.

(c) The applicant who makes a claim on behalf of dependents must have legal custody of the dependents or be otherwise legally authorized to act on the

dependents' behalf. The commission may require proof of such authority.

(d) To be eligible for compensation, the victim must be the victim of a covered crime under section 351-32, Hawaii Revised Statutes.

(e) A victim may be eligible for compensation whether or not any person is prosecuted for or convicted of a crime as set forth in section 351-32, Hawaii Revised Statutes, provided that the crime has been reported to the police without undue delay. The filing of criminal charges by the prosecuting attorney shall be considered as conclusive proof that a crime has been committed. However, a victim may be eligible for compensation notwithstanding the fact that the prosecuting attorney has not filed criminal charges.
 [Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-31)

§23-605-7 Reductions or denials of awards. (a) An award shall not be reduced or denied, except as provided in section 351-31(c). Factors that shall not be considered in reducing or denying an award include, but are not limited to:

- (1) Cases involving sexual assault:
 - (A) The manner in which the victim was dressed at the time of the assault;
 - (B) Where the victim was prior to the sexual assault;
 - (C) The time of the sexual assault;
 - (D) Whether the victim was or may have been under the influence of alcohol or drugs;
 - (E) Whether the victim had a previous sexual relationship with the offender;
 - (F) Whether the victim was married to the offender;
 - (G) Whether the victim was dating the offender;
 - (H) Whether the victim consented to prior sexual activity with the offender;
 - (I) The occupation of the victim;
 - (J) Whether the victim has a record of prior sexual assaults;
 - (K) Whether the victim has a criminal record; and

- (L) Whether the victim consented to the sexual act if the victim is below the age of consent, mentally defective, mentally incapacitated or physically helpless.
 - (2) In cases involving assault or abuse of a family or household member:
 - (A) Whether the victim continued to live with the offender after the assault;
 - (B) The number of applications submitted by the victim; and
 - (C) Where the victim has a familial relationship to the offender.
- [Eff JUL 30 2001] (Auth: HRS
§351-68) (Imp: HRS §§351-33, 351-35)

§23-605-8 Medical and mental health treatment plan. (a) The commission may request a treatment plan from service providers who provide continuous treatment to the victim at any time after the date of the injury. The information may be used to determine appropriateness of the treatment, the connection between the treatment and the injury, and the portion for which the commission shall be responsible.

(b) The treatment plan shall include, but not be limited to the following information:

- (1) All the dates of treatment;
- (2) The anticipated or actual date that treatment is terminated;
- (3) The initial diagnosis, measurable treatment goals;
- (4) The estimated cost of treatment, including a breakdown of anticipated payments from collateral sources, including insurance; and
- (5) Any pre-existing condition. If any pre-existing condition exists, the percentage of treatment and costs that are directly related to the injury received as a result of the crime.

(c) After each confirmation period, the service provider must submit a treatment update that includes what goals were attained, why goals were not attained, expected duration, and goals to be accomplished in the

following quarter. [Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-15)

§23-605-9 Medical expenses. (a) A medical treatment provider shall be qualified in the field in which they are providing services.

(b) A medical treatment provider may be required to submit a treatment plan as specified under section 23-605-8.

(c) Medical expenses are those expenses directly related to the incident that may include:

- (1) Hospitalization;
- (2) Home nursing care;
- (3) Plastic surgery;
- (4) Air and ground ambulance service;
- (5) Prescription drugs;
- (6) Prescription eyeglasses, contact lens, dentures, and prosthetics if damaged in the crime;
- (7) Nontraditional medical treatment;
- (8) Rehabilitation and retraining by a licensed physical therapist;
- (9) Emergency room treatment;
- (10) Outpatient physicians care;
- (11) Modifications to home or vehicle because of disability;
- (12) Naturopathic treatment;
- (13) Chiropractic treatment; or
- (14) Other appropriate medical care.

[Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-33)

§23-605-10 Mental health expenses. (a) A mental health treatment provider shall be qualified in the field in which they are providing services.

(b) A mental health treatment provider may be required to submit a treatment plan as specified under section 23-605-8.

(c) Mental health expenses are those expenses directly related to the crime. The following charges are not normally considered customary therapy expenses, :

- (1) Preparation of reports or documents;

- (2) Consultation meeting between service provider and other agencies or persons;
- (3) Sessions in which the victim or applicant fails to show up;
- (4) Sessions in which the victim is not present, except in cases where the session is required for the treatment of the victim and is part of the victim's treatment.
- (5) Transporting or accompanying a victim to appointments. [Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-33)

§23-605-11 Funeral and burial expenses. (a) The commission shall consider all reasonable and customary funeral and burial expenses. Funeral and burial expenses include:

- (1) Customary mortuary and cemetery costs that may include funeral services, use of facilities, flowers, vases, reception expenses, clothing for deceased, and death certificates.
 - (2) Shipment of the victim's body to another country, state, or county for burial may be considered as a necessary expense.
- (b) Expenses that are not reasonable customary expenses include, but are not limited to, transportation and housing costs for distantly located family members of the deceased. [Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-33)

§23-605-12 Loss of earnings. (a) An applicant may be awarded compensation for lost earnings provided they were employed on a full time, part time or intermittent basis, paid appropriate federal and state taxes and exhausted sick or administrative pay during the period of disability and have met one of the following criteria. In order to make a determination for lost earnings, the applicant must have:

- (1) Been on an approved leave without pay and the employer has kept the position open or if the position has been filled it shall be vacated once the victim has been certified as able to work;

- (2) Been called to work and would have worked, except for the crime-related disability;
 - (3) Been scheduled to begin work, signed an employment contract and fulfilled all the requirements of the position, but was unable to start because of the crime related disability;
 - (4) Filed income tax returns and there was taxable gross income as evidenced by IRS Form 1040 "Schedule C" for sole proprietors, IRS Form 1065 for partnerships or IRS Form 1120 for corporate officers; or
 - (5) Lost their job as the result of the crime.
- (b) During the disability period, the applicant must have been under the care of a medical or mental health service provider. The service provider must certify the nature and duration of disability. A disability retirement from any private, county, state or federal employer shall be considered as conclusive proof of disability.
- (c) If a medical certificate is not submitted, the lost earnings will be administratively limited to four days. [Eff **JUL 30 2001**] (Auth: HRS \$351-68)
(Imp: HRS \$351-33)

\$23-605-13 Dependency. Dependents of deceased victims may be eligible for compensation. Factors to determine dependency may include whether the:

- (1) The dependent was receiving financial support from the victim at the time of victim's death;
- (2) Dependent was receiving financial support due to fulltime attendance in school or because of a physical or psychological disability. Proof of guardianship is required for the dependent that is physically or psychologically impaired;
- (3) Deceased victim was paying court-ordered child support or alimony; or
- (4) Deceased victim was employed in an occupation and paid appropriate Federal and State taxes on this income. [Eff _____]
(Auth: HRS \$351-68) (Imp: HRS \$351-33)

§23-605-14 Pecuniary (monetary) loss.

Verification is required to establish other monetary losses and may include, but not limited to:

- (1) Reasonable cleaning of the crime scene;
- (2) Reasonable replacement or rental cost for items taken as evidence;
- (3) Loss of financial support as the result of an eligible crime; or
- (4) Replacement for dependent care or independent living support when evidenced by the attending medical or therapeutic service provider. [Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-33)

§23-605-15 Administrative compensation award guidelines. Administrative compensation award guidelines may be established by the commission and applied on a case-by-case basis. [Eff JUL 30 2001] (Auth: HRS §351-68) (Imp: HRS §351-33)

DEPARTMENT OF PUBLIC SAFETY

The repeal of chapters 23-191, 23-600, 23-601, 23-602, 23-603, and 23-604 and the adoption of chapter 23-605, Hawaii Administrative Rules, on the Summary Page dated June 20, 2001, were adopted on June 20, 2001, following a public hearing held on April 26, 2001, after public notice was given in the Midweek on March 19, 2001.

The repeal of chapter 23-191, subtitle 2 and the repeal of chapters 23-600, 23-601, 23-602, 23-603, and 23-604 and the adoption of chapter 23-605, subtitle 4 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Ted Sakai

Ted Sakai, Director
Department of Public
Safety

APPROVED:

Benjamin J. Cayetano

Benjamin J. Cayetano
Governor
State of Hawaii

Dated: 7/18/01

JUL 19 2001

Filed

APPROVED AS TO FORM:

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OFFICE