



GOVERNOR
Asa Hutchinson

STATE OF ARKANSAS Arkansas Department of Public Safety

Crime Victims Reparations Board

Rule Change Summary 2019

Changes made to state law as a result of the 2019 session of the General Assembly are addressed in the proposed rule changes. Specific rule change proposals are as follows:

- Act 315 of 2019 required that all agencies discontinue the use of the word “Regulation” (and Specifications) and refer to all agency rules as “rules.” Accordingly, all references to “regulations” have been removed.
- Act 910 of 201 (the “Transformation Bill”) created the “Department of Public Safety” and moved the Crime Victims Reparations Board under the direction of the Secretary of the Department of Public Safety. Throughout the rule changes, the Secretary and/or Department of Public Safety has been substituted for the Office of Arkansas Attorney General.

Rule 1, Title and Operative Date of the Act.

- Removes reference to regulations

Rule 2, Definitions.

- Proposed language change at 2.3(D) includes an additional person to be included in the term victim. The language is necessary to be consistent with statutory changes that were approved by Act 548 of 2001 to A.C.A. §16-90-703.
- Proposed language change to 2.9-allowable expense changes the maximum compensation for funeral expenses from \$5,000 to 7,500. The language change is necessary to make the dollar amount for funeral expenses consistent with Rule 10 which was approved in 2004. Also removes reference to regulations.

Rule 4, Membership and Officers of the Board.

- Proposed language change restructures the make-up of the Board. The language change is necessary to be consistent with statutory changes that were approved by Act 773 of 1995 to A.C.A. §16-90-705.

Rule 6, Powers and Duties of the Board.

- Proposed language change to 6.4 removes reference to regulations.
- Proposed language change to 6.15 changes the language from Office of the Attorney General to Department of Public Safety.

Rule 7, Meetings of the Board.

- Proposed language at 7.1 reflects the current meeting schedule of the Board. Proposed language specifically lists the months in which the Board will meet to hear appeal claims. Language was part of an emergency rule effective 10/20/94.
- Proposed language at 7.4 reflects the current practice of the Board in regards to a quorum and acting with consent decrees. Language was part of an emergency rule effective 10/20/94.
- Proposed language at 7.7 removes restrictions of voting by proxies. Language was part of an emergency rule effective 10/20/94.

Rule 8, Eligibility Criteria for Compensation.

- Proposed language change at 8.12 removes reference to regulations.

Rule 10, Maximum Compensation Amounts and Methods of Payments.

- Proposed language change to 10.5 removes reference to regulations.

Rule 15, Board Staff.

- Proposed language changes the language from Office of the Attorney General to Department of Public Safety.

Rule 17, Amendment to Rules and Regulations.

- Proposed language change removes reference to regulations.

Rule 20, Conflict of Interest.

- Proposed language defines conflict of interest for the administrative staff of the Board. This language is necessary as the staff reviews all claims submitted to the Board and the language provides a procedure for addressing conflicts of interest.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH THE
ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Public Safety

DIVISION Arkansas Crime Victims Reparations Board

DIVISION DIRECTOR Secretary Jami Cook

CONTACT PERSON Amanda Yarbrough

ADDRESS #4 State Police Plaza Drive, Little Rock, AR 72209

PHONE NO. (501) 682-4750 **FAX NO.** (501) 682-1582 **E-MAIL** Amanda.yarbrough@arkansas.gov

NAME OF PRESENTER AT COMMITTEE MEETING Amanda Yarbrough, Jami Cook, or Lynette Parham

PRESENTER E-MAIL Amanda.yarbrough@arkansas.gov

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after “Short Title of this Rule” below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica C. Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Crime Victim’s Reparations Board Rules

2. What is the subject of the proposed rule?

Addressing changes made during the 2019 legislative session (Acts 315 and 910) and necessary changes as a result of the Act 781 of 2017 rule review.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No X

If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No X

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Arkansas Crime Victims Reparations Board

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No X If yes, please provide a brief summary explaining the rule.

Does this repeal an existing rule? Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”**

See attached summary

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation.

Arkansas Code Annotated 16-90-706

7. What is the purpose of this proposed rule? Why is it necessary?

Compliance with Acts 315 and 910 of 2019 and Act 781 of 2017 rule review.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

<https://portal.arkansas.gov/agency/department-of-public-safety/crime-victims-reparations-board/>

9. Will a public hearing be held on this proposed rule? Yes X No _____
If yes, please complete the following:

Date: unknown

Time: unknown

Place: unknown

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

December 23, 2019

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

To be determined – January 1, 2020

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of

Arkansas Crime Victims Reparations Board
the publication of said notice.

See attached

13. Please provide proof of filing the rule with the Secretary of State as required pursuant to Ark. Code Ann. § 25-15-204(e).

See attached

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Unknown

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Department of Public Safety

DIVISION Arkansas Crime Victims Reparations Board

PERSON COMPLETING THIS STATEMENT Amanda Yarbrough

TELEPHONE NO (501) 682-4750 **FAX NO** (501) 682-1582

EMAIL: Amanda.yarbrough@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Crime Victim's Reparations Board Rules

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No X

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes X No _____

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes X No _____

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;

N/A

(b) The reason for adoption of the more costly rule;

N/A

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

N/A

(d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

N/A

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$0 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$0 _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$0 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$0 _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$0 _____

Next Fiscal Year

\$0 _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$0 _____

Next Fiscal Year

\$0 _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes _____ No X

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Rule No. 1

TITLE AND OPERATIVE DATE OF THE ACT

| The title of the Act under which these rules ~~and regulations~~ are being promulgated is known as the Arkansas Crime Victims Reparations Act, hereinafter referred to as the Act.

The operative date of the Act is July 1, 1988.

Rule No. 2

DEFINITIONS

1. BOARD - Means the Arkansas Crime Victims Reparations Board, hereinafter referred to as the Board.

2. CLAIMANT - Means any of the following persons applying for reparations under this act:

- a. a victim,
- b. dependent of a victim who has died because of criminally injurious conduct, or
- c. a person authorized to act on behalf of any of the persons listed above.

The term shall not include a service provider.

3. VICTIM - Means a person who suffers personal injury or death as a result of criminally injurious conduct committed within the state of Arkansas. The term further includes any Arkansas resident who suffers personal injury as the result of criminally injurious conduct which occurs in states presently not having crime victims reparations programs for which the victim is eligible and any Arkansas resident who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.

The term “victim” shall include a person who:

(A) is an immediate family member of a deceased victim, a victim of sexual assault, or a child victim;

(B) is not an immediate family member, but resided, at the time of the crime, in the same permanent household as a deceased victim;

(C) discovered the body of a victim who dies as the result of criminally injurious conduct.

(D) is the minor child, whether by blood, adoption, or marriage, of an eligible victim.

4. DEPENDENT - Means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of a victim born after the death of the victim where the death occurred as a result of criminally injurious conduct.

5. IMMEDIATE FAMILY - Means a person’s spouse, children, parents or guardian, siblings, and grandparents whether related by blood, adoption, or marriage.

6. CRIMINALLY INJURIOUS CONDUCT - Means an act which occurs or is attempted in this state that results in personal injury or death to a victim which is punishable by fine, imprisonment or death. This term shall include acts of terrorism committed outside of the United States as defined in §2331, Title 18, United States Code, against any Arkansas resident. This term shall not include acts arising out of the operation of motor vehicles, boats or aircraft unless the acts involve any of the following:

- (A) Injury or death intentionally inflicted through the use of a motor vehicle, boat, or aircraft;
- (B) A violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq;
- (C) A violation of A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death).

7. PERSONAL INJURY - Means actual bodily harm, including pregnancy or mental anguish, which is the direct result of a violent criminal act.

8. ECONOMIC LOSS - Means monetary detriment consisting of allowable expense, and work loss, but shall not include non-economic detriment.

9. ALLOWABLE EXPENSE - Means charge incurred for needed products, services and accommodations, including, but not limited to medical care, rehabilitation, rehabilitative occupational training, crime scene cleanup, and other remedial treatment and care. It also includes a total charge not in excess of ~~Five Thousand Dollars (\$5,000)~~ Seven Thousand Five Hundred Dollars (\$7,500) for expenses related to funeral, cremation or burial. Such term shall also include the cost of legal services for the establishment of guardianship for minor children as per Rule 18 of the Arkansas Crime Victims Reparations Board Rules ~~and Regulations~~.

10. WORK LOSS - Means loss of income from work the victim or claimant would have performed in their regular course of employment if the victim had not been injured or died, reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. Individuals filing claims must provide clear and convincing evidence of employment including but not limited to pay stubs, tax returns or certified documentation from employer.

11. NON-ECONOMIC DETRIMENT - Means pain, suffering, inconvenience, physical impairment and non-pecuniary damage.

12. COLLATERAL SOURCE - Means a source of benefits or advantages for economic loss which the claimant has received, or which is readily available to the claimant including but not limited to any one or more of the following:

- (a) the offender,
- (b) the government of the United States or any agency thereof, in the form of benefits, such as Social Security, Medicare, and Medicaid, or a state or any of its political subdivisions,
- (c) state required temporary non-occupational disability insurance,
- (d) workers' compensation,

- (e) wage continuation programs of any employer,
- (f) proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, or
- (g) a contract providing prepaid hospital and other health care service or benefits for disability.

13. CATASTROPHIC - Means injuries involving a sustained loss of function, including but not limited to any of the following conditions: mangle, crushing, or amputation of a major portion of an extremity; traumatic injury to the spinal cord that has caused or may cause paralysis; severe burns that require burn center care; or serious head injury, loss of vision, or loss of hearing.

14. TOTAL AND PERMANENT DISABILITY – Means an impairment based upon demonstrable medical evidence, which restricts the victim from performing the usual tasks of a worker to such an extent that the victim cannot maintain employment.

Rule No. 3

TYPES OF COMPENSATION AVAILABLE

For victims, as defined by A.C.A. §16-90-703(2), compensation is available for the following types of expenses:

Economic loss sustained by the victim or a dependent arising from the criminally injurious conduct of another. Future economic loss is also compensable but may be reduced or discontinued if the recipient's circumstances change.

For victims, as defined by A.C.A. §16-90-703(2), compensation is available for the following types of expenses:

Mental health expenses incurred as a result of the criminally injurious conduct of another.

Awards for mental health expenses, for any victim, shall be made in accordance with guidelines established by a committee of mental health professionals appointed by the Arkansas Crime Victims Reparations Board.

Rule No. 4

MEMBERSHIP AND OFFICERS OF THE BOARD

The Board shall consist of five (5) members appointed by the Governor to serve four (4) year terms and until the successor is appointed and qualified. ~~At least three (3) members of the Board shall be persons admitted to practice law in this state.~~ At least two (2) members of the Board shall be persons admitted to practice law in this state. At least one (1) member of the board shall be: (A) a victim of criminally injurious conduct; (B) the next of kin of a homicide victim, or (C) an individual experienced in providing victim assistance services. Of the first members appointed, two (2) shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, and one (1) shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner.

Rule No. 5

PURPOSE OF THE BOARD

The purpose of the Board shall be to hear and decide all matters relating to Crime Victims Reparations applications. The Board shall have the authority to award compensation to victims of crime for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

Rule No. 6

POWERS AND DUTIES OF THE BOARD

The Board shall have the power:

1. To hear and determine all matters relating to applications filed with the Arkansas Crime Victim Reparations Board for compensation, including the power to re-investigate or re-open claims without regard to the statutes of limitations.
2. The Board, or the Administrator, on behalf of the Board, may subpoena witnesses, compel their attendance, enter orders, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence. The Board shall be considered in continuous session for the purposes stated above.
3. To regulate its own procedures except as otherwise provided in the Act.
4. To adopt rules ~~and regulations~~ to implement the provisions of the Act.
5. To define any term not defined in the Act.
6. To prescribe forms necessary to carry out the purposes of the Act.
7. To request access to any reports of investigations or other data necessary to assist the Board in making a determination of eligibility for compensation.
8. To publicize the availability of compensation and information regarding the filing of claims therefore.
9. To order the claimant to submit to a mental or physical examination or order the autopsy of a deceased victim if the results would be material to a claim.
10. To require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.
11. To deny, withdraw or reduce an award of compensation upon finding that the claimant did not fully cooperate with the appropriate law enforcement agencies.
12. To reconsider a decision granting or denying a compensation award, based on its own motion or on request of the claimant.
13. To suspend the application for compensation proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but the Board may make a tentative award.

14. To join in a civil action as a part plaintiff to recover the compensation awarded if the claimant brings such action.
15. The Board shall be provided such office, supplies, staff and secretarial services as necessary by the ~~Office of the Attorney General~~ Department of Public Safety.
16. All necessary and reasonable expenses of the Board shall be paid for from the Crime Victims Reparations Revolving Fund.
17. The Board shall have the duty of preparing and transmitting an annual report to the Governor.

Rule No. 7

MEETINGS OF THE BOARD

1. The Board shall meet on the third Thursday of ~~each month for nine (9) months each year, or at the call of the Chairperson, at 9:30 a.m. – January, March, May, July, September, and November – six (6) times each year, or at the call of the Chairperson, at 9:30 a.m. to hear appeal claims.~~
2. The Chairperson shall serve as presiding officer at all official meetings of the Board. In the absence of the Chairperson, the remaining Board members present at the meeting may designate a president officer for that meeting.
3. The Chairperson shall have the authority to vote on all matters coming before the Board.
4. ~~A quorum shall consist of three (3) members. A majority of the Board shall constitute a quorum at hearings on appeal claims. The concurrence of two (2) members of the commission shall be necessary to determine the outcome of a claim. The Board may act in a panel of three (3) with proxies or consent decrees being permitted.~~
5. In the event of a tie vote the matter or matters shall be continued to the next meeting.
6. The order of business at any meeting of the Board shall follow the agenda prepared in advanced of the meeting. Such other matters may be brought before the Board as shall be requested by any member in writing and presented to the Chairperson.
- ~~7. Proxies vote shall not be permitted at the Board meetings.~~
- ~~8.7.~~ Administrative staff shall be responsible for preparation of minutes for each Board meeting.
- ~~9.8.~~ Roberts Rules of Order, Revised, shall govern all meetings of this Board.

Rule No. 8

ELIGIBILITY CRITERIA FOR COMPENSATION

1. The criminally injurious conduct leading to the filing of the reparations claim must have occurred in Arkansas or must have occurred to a resident of Arkansas in a state without a reparations program for which the victim is eligible or to a resident of Arkansas who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.
2. The incident must have occurred on or after July 1, 1988.
3. The incident must have been reported to the proper authorities within 72 hours or would have been reported within the period of time except for good cause.

(A) Good cause shall include, but not be limited to:

- (1) the physical incapacity of a victim,
- (2) the mental incompetence of a victim,
- (3) the age of the victim,
- (4) the injury was not reasonably discoverable.

4. The application for compensation must be filed within one (1) year of the incident, unless the Board finds good cause for failure to file a timely claim.

(A) Good cause shall include, but not be limited to:

- (1) the physical incapacity of a victim,
- (2) the mental incompetence of a victim,
- (3) the age of the victim,
- (4) the injury was not reasonably discoverable,
- (5) restitution or other collateral source was regularly being paid and then terminated,
- (6) postal service delays which are verifiable.

5. The victim must have suffered personal injury or death as a result of the criminal act of another.
6. The claimant and/or victim must to the extent able, have cooperated with law enforcement officials during their investigation.

The following issues may be considered when determining cooperation:

1. Failure to cooperate in the prosecution of the defendant or to appear as a witness.
2. Not cooperating initially but later deciding to cooperate and the delay allows

the defendant to escape prosecution.

3. Not cooperating initially but later deciding to cooperate without any good cause as to the delay.
 4. Causing extra or unnecessary effort on the part of law enforcement to gain prosecution.
 5. Reluctantly providing information pertaining to the crime; failing to appear when requested, without good cause; giving false or misleading information; or attempting to avoid law enforcement.
 6. Failing to prosecute or cooperate with law enforcement because of fear for his/her personal safety.
 7. Failing to give testimony or otherwise cooperate with the prosecutor's office.
 8. Failing to cooperate with Arkansas Crime Victims Reparations Board administrative staff by not returning requested information, not returning telephone calls, not providing accurate information, etc.
7. The net amount of compensation requested in the application must not have been paid by another source.
 8. The claimant and/or victim was not the offender or an accomplice of the offender. Claimant/victim may be denied if he/she has been engaged in an illegal activity during his/her victimization.

Illegal activity may consist of any of the following but is not limited to:

- (a) victim was buying drugs;
- (b) victim was using drugs;
- (c) victim was a minor and drinking alcohol;
- (d) victim was in an illegal place of business, such as a crackhouse, house of prostitution, or gambling establishment.

If claimant/victim contributed or was offender - compensation shall not be awarded to a claimant/victim who was the offender or an accomplice to the offender or who encouraged or in any way participated in the criminally injurious conduct. Compensation may be diminished to the extent or the degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the Board.

In determining the amount of an award, the Arkansas Crime Victims Reparations Board shall determine whether, because of his conduct, the victim of such crime or the intervenor contributed to the infliction of his injury or to his death, and the Board shall reduce the amount of the award or reject the claim altogether, in accordance with such determination.

Contribution is determined by the action portrayed by the victim at the time of or immediately preceding the crime. While there is no set formula for calculating the percentage of contribution to be assessed, the following factors should serve as a guideline:

- (1) If it appears that the victim was provoked by the defendant in a manner threatening bodily harm to the victim, and the victim acted in self defense, no contribution should be assessed.
- (2) If it appears that the victim was provoked by the defendant in a manner where bodily harm to the victim appeared unlikely, and the victim used poor judgment because of intoxication or other drug involvement, a 25% contribution factor should be assessed.
- (3) If it appears that the defendant was provoked by the victim in a manner where bodily harm appeared unlikely, a 50% contribution factor should be assessed.
- (4) If the victim is injured as a result of his conduct not being that of a prudent person, a 50% contribution factor should be assessed.
- (5) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant appears intentional, a 75% contribution factor should be assessed.
- (6) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant is unquestionable, a 100% contribution factor should be assessed and the claim denied.
- (7) If the victim is not wearing protective equipment as prescribed by law, a 25% contribution factor shall be assessed. This includes helmets, seat belts, etc.
- (8) If the victim was involved in drugs as verified by the police report or other official documents, a 100% contribution factor should be assessed and the claim denied.

9. The injury or death must not have been the result of negligent maintenance or use of a motor vehicle unless the acts are committed with the intent to inflict injury or death or unless the acts committed were in violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq. or A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death.)
10. Claimant/victim has not been convicted of a felony involving criminally injurious conduct.
11. Awards shall not be made to a victim who is injured or killed while confined in state, county, or municipal jail, prison or other correctional facility as a result of conviction of any crime.
12. The award would unjustly benefit the offender or accomplice except as permitted by Rule 9 of the Arkansas Crime Victims Reparations Rules ~~and Regulations~~. (See Rule 9)
13. In those cases where the victim has died, the claimant will be considered to have no compensable loss for the expenses incurred by the victim as a result of the criminally injurious conduct if the claimant has no legal obligation to pay for these expenses.

Rule No. 9

UNJUST ENRICHMENT

1. No portion of a compensation award shall unjustly benefit the offender or accomplice. However, no award shall be denied solely on the basis of the victim's familial relationship to the offender or the presence of the offender in the household at the time of the award.
2. In determining whether or not an award would unjustly benefit the offender, the following factors should be considered:
 - a. The legal responsibilities of the offender to the victim and collateral resources available to the victim from the offender. Victims of family violence must not be penalized when collateral sources of payment are not viable.
 - b. Payments to victims of family violence that only minimally or inconsequentially benefit the offender.
 - c. The special needs of child witnesses to violence and child victims of criminal violence, especially when the perpetrator is a parent who may or may not live in the same residence.
3. Collateral resources available to the victim from the offender shall be considered when awarding a claim, however, the victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery.
4. Payments to third-party providers shall be made to prevent cash intended for the victim's bills to be used by or on behalf of the offender.
5. The Board shall not penalize child victims by denying or delaying payment when offender or collateral resources are not forthcoming.

Rule No. 10

MAXIMUM COMPENSATION AMOUNTS AND METHODS OF PAYMENTS

1. Compensation payable to a victim or claimant incurring expenses due to injury or death may not exceed a total of Ten Thousand Dollars (\$10,000.00). However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the maximum reparations amount shall not exceed \$25,000.
2. Compensation for funeral expenses of deceased victims may not exceed \$7,500.
 - a. Collateral sources of income such as burial policies, workers' compensation, etc. will be applied towards the total cost of the victim's funeral.
 - b. Life insurance may not be used as a collateral source when dependents of the deceased victim remain and may benefit from the proceeds of this policy.
 - c. Life insurance will be utilized as a collateral source and be applied against funeral expenses in those cases involving no surviving dependents.
3. The Board may provide for the payment to a claimant in a lump sum or in installments.
4. The Board shall pay all or part of an award directly to service providers unless evidence of prior payment for services is submitted.
5. The Board may also provide for payment of legal fees, not to exceed Two Hundred Fifty Dollars (\$250) - plus filing fees, of a guardianship when an award has been made to a minor child as per Rule 18 of the Arkansas Crime Victims Reparations Board Rules ~~and Regulations~~. Legal services expenses shall not be deducted from the otherwise compensable amount unless amount is over \$10,000.
6. Upon request of the claimant, the Board may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board of either of the following:
 - a. That the award in a lump sum will promote the interests of the claimant;
 - b. That the present value of all future economic loss does not exceed One Thousand Dollars (\$1,000).
7. An award payable in installments for future economic loss may be made only for a period that the Board can reasonably determine future economic loss and may be modified by the Board upon finding that a significant change in circumstances has occurred.
8. Approved claims will be paid in the order of their approval by the Board as funds become available.

Rule No. 11

APPLICATION REVIEW PROCEDURE

1. A victim, dependent of a victim, or person legally acting in behalf of the victim, must first secure a copy of the official Victims Reparations Application Form from their local prosecuting attorney's office, law enforcement agency, victim/witness coordinator, service provider or from the Board. Assistance in completing the form may be provided by the victim/witness coordinator or the prosecuting attorney's staff in districts that have no victim/witness coordinator. The Crime Victims Reparations Board staff will also be available to assist in the completion of the form.
2. A form must be completed in its entirety, and accompanied with an itemized statement and police offense report or other official documentation from the agency to which the incident was reported.
3. A victim must submit a Victims Reparations Application as a necessary (but not sufficient) condition of directly receiving payment. The Board may directly reimburse a medical-care provider for costs associated with a sexual-assault testing kit, even in the absence of a victim's application. Such costs, which include those associated with testing for sexually transmitted diseases, may be reimbursed regardless of which fund or cost center is used to make the reimbursement.
4. The staff of the Board shall log the application as being received and begin a thorough review and verification process.
5. The Board and staff have the authority to conduct investigations and/or request any additional information from the victim, the investigating law enforcement agency, medical personnel and/or facilities, witnesses, employers and others as may be deemed necessary for the proper review and verification of the application.
6. The staff shall make a thorough analysis of the application and attachments, then prepare staff comments relative to the application which shall be filed in the application folder along with supportive data that is pertinent to the investigation.
7. The administrative staff shall have the authority to review and decide crime victim reparations claims up to the maximum allowable amount of Ten Thousand Dollars (\$10,000) or Twenty-five Thousand Dollars (\$25,000) for victims whose injuries are catastrophic and result in a total and permanent disability.
8. The administrative staff of the Board shall then make a decision regarding the claim. The claimant/victim shall be mailed notification of the administrative decision within fifteen (15) calendar days by mail. If the claim is denied the claimant/victim will be notified by certified mail, return receipt requested.

9. The claimant shall have the right to appeal decisions of the Board in the manner set forth in Rule No. 14, APPEALS PROCEDURE.

Rule No. 12

ADVANCE (EMERGENCY) AWARD OF COMPENSATION

The Board may make or authorize the Administrator to make an advance (emergency) award of compensation to the claimant/victim prior to taking action on an application and pending a final decision when it appears the claim is one for which compensation is probable and undue hardship will result to the claimant/victim if immediate payment is not made. The claimant/victim may request in the application that consideration be given for an advance award and provide justification for such award. A decision denying emergency relief shall not be appealable.

The amount of such advance (emergency) award shall not exceed Five Hundred Dollars (\$500). Any advance award shall be deducted from the final compensation made to the claimant/victim. If the final award amount is less than the amount of the advance award, the claimant/victim must repay the excess to the Board. If an emergency award is made and the claimant/victim later does not follow through with prosecution or some other requirement of this program, the claimant/victim will be required to reimburse the Board for the amount of the award made.

Criteria for payment of emergency awards is listed below:

- a. Claimant/victim is without an income at the time of application resulting in loss of food, heat or shelter.
- b. Claimant/victim cannot receive emergency service (i.e. burial) without the emergency payment.

Documentation required:

- a. Proof of financial emergency should be obtained for the file such as notice of eviction from the landlord or a shut-off notice from the power company.
- b. If no proof is available, then the investigator should note in file why he/she thinks the application is considered an emergency.
- c. There must be contact with the investigating law enforcement officer to verify what occurred, the victim's innocence and the victim's cooperation. A law enforcement offense report and Crime Victims Reparations Board Law Enforcement Form must be included in the file.
- d. For wage loss claims, the employer may be contacted by telephone but the written verification must follow to go in the file. If self-employed applicant must provide a copy of his/her last three (3) years tax return or check stubs for the last three (3) months as proof of his/her income. If proof is not available, lost wages can not be considered.

- e. If the injury is not commensurate with the time lost from work, a doctor's excuse will be required.
- f. Claimant/victim is required to sign a promissory (demand) note which must be signed and executed by the claimant/victim with the Administrator prior to receiving the emergency award.

Rule No. 13

APPEALS PROCEDURE

1. In the event an application for compensation is approved in a modified form or denied, the administrative staff of the Board shall notify the claimant/victim by certified mail, return receipt requested, within fifteen (15) calendar days setting forth the basis of the decision.
2. The claimant/victim shall have the right to appeal and may do so by notifying the administrative staff of the Board, in writing, by certified mail, return receipt requested, of the intent to appeal within forty-five (45) calendar days of the date of the notification letter setting forth the Board's decision.
3. The claimant/victim shall then be entitled to a formal hearing before the Board. The hearing shall be held within ninety (90) calendar days of the date of the notice from the claimant/victim stating the intent to appeal.
4. The claimant/victim or an authorized representative, in the event the claimant/victim is incapacitated must be present at the appeal hearing. In an appeals hearing, all parties shall be afforded an opportunity to appear and be heard. A record of the proceedings shall be made and shall be transcribed upon request of any party, who shall pay transcription costs unless otherwise ordered by the Board.
5. Notification of Board meetings shall be made in compliance with Arkansas Code Annotated § 25-19-101 - 25-19-107 - the Arkansas Freedom of Information Act.
6. All agendas and supporting documentation necessary shall be mailed to the Board ten (10) calendar days in advance of the Board meeting.
7. The Board may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.
8. The Board shall render its decision relative to the appeal within ten (10) calendar days of the formal hearing and the claimant/victim will be notified by mail.
9. The claimant/victim, if not successful in the appeal to the Board shall then have thirty (30) days from the receipt of the decision to file a petition for judicial review pursuant to Arkansas Code Annotated 25-15-212 in the circuit court of his/her county of residence or in Pulaski County.

Rule No. 14

PENALTY FOR FALSE CLAIMS

The filing of a false claim for compensation pursuant to the Arkansas Crime Victims Reparations Act shall constitute a Class D Felony. If a victim or a claimant knowingly files a false claim or provides false information or fails to provide material facts or circumstances necessary to substantiate the claim, he/she may not at a later date, file a correct claim. If this happens, the claim shall be denied.

Rule No. 15

BOARD STAFF

The Administrator of the Board shall be the Chief Executive Officer of the Board staff. He/she shall be hired by the ~~Attorney General~~ Secretary of the Department of Public Safety with the advice and consent of the Board. He/she shall be responsible for the administration of the rules, ~~regulations~~, policies and procedures promulgated by the Board, pursuant to the Administrative Procedure Act, and within such restraints as mandated by statute.

The Administrator shall also be responsible for employment, supervision, evaluation and termination of Board employees and shall delegate appropriate powers and duties to them, subject to the advice and/or consent of the ~~Attorney General~~ Secretary and the Board.

Rule No. 16

CLAIMS OF INCOMPETENTS OF MINOR CHILDREN

Proof of the establishment of the guardianship may be required by the Board prior to release of funds to the claimant. A certified copy of the Order of Guardianship shall be sufficient proof.

Rule No. 17

| **AMENDMENT TO RULES ~~AND REGULATIONS~~**

| Any modification or amendment to the Rules ~~and Regulations~~ of the Board shall be made pursuant to the procedure as outlined in the Arkansas Administrative Procedure Act.

Rule No. 18

COST CEILING ON MEDICAL BILLS

In connection with claims for payment on medical bills, not covered by insurance, made by victims, the Board will award up to 65% of medical bills, not to exceed a total reimbursement of \$10,000. However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the total reimbursement shall not exceed \$25,000.

The provider of medical services to whom the award is made will be notified that by accepting the payment of 65% of their bill, they are agreeing not to commence civil actions against the victim or his legal representative to recover the balance due under the bill.

Acceptance of payment for services paid by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection.

Rule No. 19

COST CEILING ON MENTAL HEALTH BILLS

1. In connection with claims for payment of mental health services, not covered by insurance, incurred by victims, the Board will pay a maximum of twenty-five Hundred Dollars (\$2500) or provide for six (6) months, whichever occurs first, provided the treatment plan is submitted within thirty (30) days of the application to the Board for those victims receiving ongoing therapy or within thirty (30) days of beginning therapy for those victims who seek mental health treatment after making application to the board. This treatment plan must state the basis for the necessity of such treatment, the anticipated extent of the treatment, and the relationship of the treatment to the crime perpetrated upon the victim and whether or not the diagnosis is related to a pre-existing condition.
2. A mandatory review by the Board is required after ninety (90) or twenty-five hundred dollars (\$2500), whichever occurs first, should the victim of the provider find that further services are required.
 - a. The provider will be required to submit a new treatment plan to justify the continued need for the treatment and its continued relationship to the crime.
 - b. The Board may waive the maximum upon a justification of special need based upon documentation to be submitted by the provider.
 - c. The Board also reserves the right to have any mental health claims and treatment plans reviewed by an independent peer review committee should it so desire.

Rule No. 20

CONFLICT OF INTEREST

No member of the Board shall use such appointment for purposes which are motivated by private gain, including gain for providers, claimants, or victims with which the board member is associated within any capacity. There shall exist a conflict of interest when a provider, claimant, or victim with whom the board member is associated with appears before the board in the course of business of the board.

When such a conflict arises for a member, the individual member should declare the conflict. Additionally, any member of the Board who questions whether or not another member has a conflict of interest in the matter under discussion may ask for a determination by the Board. If the Board finds that a conflict exists, the affected member shall also follow the aforementioned procedure.

Any member of the Board who declares a conflict of interest, or who is found to have a conflict, should neither participate in debate nor vote on the issue in question.

A conflict of interest shall exist among members of the administrative staff in any case where a member of the Department of Public Safety's staff or a person related, whether by blood, adoption, or marriage within the second degree of consanguinity to a member of the Department of Public Safety's staff is the claimant or victim on a claim for compensation.

Additionally, the administrator of the Board and the staff attorney may determine that a conflict of interest exists on claims where one or more members of the administrative staff know the claimant or victim.

Administrative staff members shall immediately notify the administrator when another member of the Department of Public Safety's staff or someone whom they believe is known by one or more members of the administrative staff has filed a claim.

In the event that a conflict arises or exists among all members of the administrative staff, the administrative staff may gather necessary information and present the application and attachments to the Board, but shall not participate in the debate, nor vote on the claim in question.

The administrative staff shall also immediately notify the administrator when such staff members knows the victim or claimant on a particular claim.

If only one staff member is determined to have a conflict, then that staff member shall not participate in the debate, nor vote on the claim in question. If that staff member has been assigned to investigate the claim, then the administrator shall immediately re-assign the claim to another investigator.

Rule No. 21

SUPPLEMENTAL AWARDS

If at the time of the application, the victim or claimant was unable to submit all of the itemized bills, he/she may submit supplemental bills to be considered after the original award. If a victim or claimant has been awarded their original claim at a reduced amount due to contribution, then the Board will note at the time of approval whether or not they will consider any supplemental awards concerning this claim. If the Board determines that supplemental awards will not be considered after the initial award, the Board shall so note at the time of the initial award. Each case will be considered on its own merits.

The total of the original award and any and all supplemental awards may not exceed \$10,000.

Supplemental awards may be paid quarterly.

Supplemental bills will be considered only if submitted within one year of:

- a. The date of treatment, or
- b. Notification of payment or denial by a collateral source.

Rule No. 22

FINANCIAL OBLIGATION REQUIREMENT

Reparations shall not be awarded to any victim/claimant who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the board receives information or materials establishing to the satisfaction of the board that the financial obligation has been satisfied. If the board does not receive the information or materials within six months after the board notifies the victim/claimant, the application will be closed and the victim notified of their right to appeal.

Rule No. 1

TITLE AND OPERATIVE DATE OF THE ACT

The title of the Act under which these rules are being promulgated is known as the Arkansas Crime Victims Reparations Act, hereinafter referred to as the Act.

The operative date of the Act is July 1, 1988.

Rule No. 2

DEFINITIONS

1. BOARD - Means the Arkansas Crime Victims Reparations Board, hereinafter referred to as the Board.

2. CLAIMANT - Means any of the following persons applying for reparations under this act:

- a. a victim,
- b. dependent of a victim who has died because of criminally injurious conduct, or
- c. a person authorized to act on behalf of any of the persons listed above.

The term shall not include a service provider.

3. VICTIM - Means a person who suffers personal injury or death as a result of criminally injurious conduct committed within the state of Arkansas. The term further includes any Arkansas resident who suffers personal injury as the result of criminally injurious conduct which occurs in states presently not having crime victims reparations programs for which the victim is eligible and any Arkansas resident who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.

The term “victim” shall include a person who:

(A) is an immediate family member of a deceased victim, a victim of sexual assault, or a child victim;

(B) is not an immediate family member, but resided, at the time of the crime, in the same permanent household as a deceased victim;

(C) discovered the body of a victim who dies as the result of criminally injurious conduct.

(D) is the minor child, whether by blood, adoption, or marriage, of an eligible victim.

4. DEPENDENT - Means a natural person wholly or partially dependent upon the victim for care or support, and includes a child of a victim born after the death of the victim where the death occurred as a result of criminally injurious conduct.

5. IMMEDIATE FAMILY - Means a person’s spouse, children, parents or guardian, siblings, and grandparents whether related by blood, adoption, or marriage.

6. CRIMINALLY INJURIOUS CONDUCT - Means an act which occurs or is attempted in this state that results in personal injury or death to a victim which is punishable by fine, imprisonment or death. This term shall include acts of terrorism committed outside of the United States as defined in §2331, Title 18, United States Code, against any Arkansas resident. This term shall not include acts arising out of the operation of motor vehicles, boats or aircraft unless the acts involve any of the following:

- (A) Injury or death intentionally inflicted through the use of a motor vehicle, boat, or aircraft;
- (B) A violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq;
- (C) A violation of A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death).

7. PERSONAL INJURY - Means actual bodily harm, including pregnancy or mental anguish, which is the direct result of a violent criminal act.

8. ECONOMIC LOSS - Means monetary detriment consisting of allowable expense, and work loss, but shall not include non-economic detriment.

9. ALLOWABLE EXPENSE - Means charge incurred for needed products, services and accommodations, including, but not limited to medical care, rehabilitation, rehabilitative occupational training, crime scene cleanup, and other remedial treatment and care. It also includes a total charge not in excess of Seven Thousand Five Hundred Dollars (\$7,500) for expenses related to funeral, cremation or burial. Such term shall also include the cost of legal services for the establishment of guardianship for minor children as per Rule 18 of the Arkansas Crime Victims Reparations Board Rules.

10. WORK LOSS - Means loss of income from work the victim or claimant would have performed in their regular course of employment if the victim had not been injured or died, reduced by any income from substitute work actually performed by the victim or claimant or by income the victim or claimant would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. Individuals filing claims must provide clear and convincing evidence of employment including but not limited to pay stubs, tax returns or certified documentation from employer.

11. NON-ECONOMIC DETRIMENT - Means pain, suffering, inconvenience, physical impairment and non-pecuniary damage.

12. COLLATERAL SOURCE - Means a source of benefits or advantages for economic loss which the claimant has received, or which is readily available to the claimant including but not limited to any one or more of the following:

- (a) the offender,
- (b) the government of the United States or any agency thereof, in the form of benefits, such as Social Security, Medicare, and Medicaid, or a state or any of its political subdivisions,
- (c) state required temporary non-occupational disability insurance,
- (d) workers' compensation,

- (e) wage continuation programs of any employer,
- (f) proceeds of a contract of insurance payable to the claimant for loss which the victim sustained because of the criminally injurious conduct, or
- (g) a contract providing prepaid hospital and other health care service or benefits for disability.

13. CATASTROPHIC - Means injuries involving a sustained loss of function, including but not limited to any of the following conditions: mangle, crushing, or amputation of a major portion of an extremity; traumatic injury to the spinal cord that has caused or may cause paralysis; severe burns that require burn center care; or serious head injury, loss of vision, or loss of hearing.

14. TOTAL AND PERMANENT DISABILITY – Means an impairment based upon demonstrable medical evidence, which restricts the victim from performing the usual tasks of a worker to such an extent that the victim cannot maintain employment.

Rule No. 3

TYPES OF COMPENSATION AVAILABLE

For victims, as defined by A.C.A. §16-90-703(2), compensation is available for the following types of expenses:

Economic loss sustained by the victim or a dependent arising from the criminally injurious conduct of another. Future economic loss is also compensable but may be reduced or discontinued if the recipient's circumstances change.

For victims, as defined by A.C.A. §16-90-703(2), compensation is available for the following types of expenses:

Mental health expenses incurred as a result of the criminally injurious conduct of another.

Awards for mental health expenses, for any victim, shall be made in accordance with guidelines established by a committee of mental health professionals appointed by the Arkansas Crime Victims Reparations Board.

Rule No. 4

MEMBERSHIP AND OFFICERS OF THE BOARD

The Board shall consist of five (5) members appointed by the Governor to serve four (4) year terms and until the successor is appointed and qualified. At least two (2) members of the Board shall be persons admitted to practice law in this state. At least one (1) member of the board shall be: (A) a victim of criminally injurious conduct; (B) the next of kin of a homicide victim, or (C) an individual experienced in providing victim assistance services. Of the first members appointed, two (2) shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, and one (1) shall be appointed for a term of four (4) years. Vacancies shall be filled in the same manner.

Rule No. 5

PURPOSE OF THE BOARD

The purpose of the Board shall be to hear and decide all matters relating to Crime Victims Reparations applications. The Board shall have the authority to award compensation to victims of crime for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

Rule No. 6

POWERS AND DUTIES OF THE BOARD

The Board shall have the power:

1. To hear and determine all matters relating to applications filed with the Arkansas Crime Victim Reparations Board for compensation, including the power to re-investigate or re-open claims without regard to the statutes of limitations.
2. The Board, or the Administrator, on behalf of the Board, may subpoena witnesses, compel their attendance, enter orders, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence. The Board shall be considered in continuous session for the purposes stated above.
3. To regulate its own procedures except as otherwise provided in the Act.
4. To adopt rules to implement the provisions of the Act.
5. To define any term not defined in the Act.
6. To prescribe forms necessary to carry out the purposes of the Act.
7. To request access to any reports of investigations or other data necessary to assist the Board in making a determination of eligibility for compensation.
8. To publicize the availability of compensation and information regarding the filing of claims therefore.
9. To order the claimant to submit to a mental or physical examination or order the autopsy of a deceased victim if the results would be material to a claim.
10. To require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.
11. To deny, withdraw or reduce an award of compensation upon finding that the claimant did not fully cooperate with the appropriate law enforcement agencies.
12. To reconsider a decision granting or denying a compensation award, based on its own motion or on request of the claimant.
13. To suspend the application for compensation proceedings pending disposition of a criminal prosecution that has been commenced or is imminent, but the Board may make a tentative award.

14. To join in a civil action as a part plaintiff to recover the compensation awarded if the claimant brings such action.
15. The Board shall be provided such office, supplies, staff and secretarial services as necessary by the Department of Public Safety.
16. All necessary and reasonable expenses of the Board shall be paid for from the Crime Victims Reparations Revolving Fund.
17. The Board shall have the duty of preparing and transmitting an annual report to the Governor.

Rule No. 7

MEETINGS OF THE BOARD

1. The Board shall meet on the third Thursday of January, March, May, July, September, and November – six (6) times each year, or at the call of the Chairperson, at 9:30 a.m. to hear appeal claims.
2. The Chairperson shall serve as presiding officer at all official meetings of the Board. In the absence of the Chairperson, the remaining Board members present at the meeting may designate a president officer for that meeting.
3. The Chairperson shall have the authority to vote on all matters coming before the Board.
4. A majority of the Board shall constitute a quorum at hearings on appeal claims. The concurrence of two (2) members of the commission shall be necessary to determine the outcome of a claim. The Board may act in a panel of three (3) with proxies or consent decrees being permitted.
5. In the event of a tie vote the matter or matters shall be continued to the next meeting.
6. The order of business at any meeting of the Board shall follow the agenda prepared in advanced of the meeting. Such other matters may be brought before the Board as shall be requested by any member in writing and presented to the Chairperson.
7. Administrative staff shall be responsible for preparation of minutes for each Board meeting.
8. Roberts Rules of Order, Revised, shall govern all meetings of this Board.

Rule No. 8

ELIGIBILITY CRITERIA FOR COMPENSATION

1. The criminally injurious conduct leading to the filing of the reparations claim must have occurred in Arkansas or must have occurred to a resident of Arkansas in a state without a reparations program for which the victim is eligible or to a resident of Arkansas who is injured or killed by an act of terrorism committed outside of the United States as defined in § 2331, Title 18, United States Code.
2. The incident must have occurred on or after July 1, 1988.
3. The incident must have been reported to the proper authorities within 72 hours or would have been reported within the period of time except for good cause.

(A) Good cause shall include, but not be limited to:

- (1) the physical incapacity of a victim,
- (2) the mental incompetence of a victim,
- (3) the age of the victim,
- (4) the injury was not reasonably discoverable.

4. The application for compensation must be filed within one (1) year of the incident, unless the Board finds good cause for failure to file a timely claim.

(A) Good cause shall include, but not be limited to:

- (1) the physical incapacity of a victim,
- (2) the mental incompetence of a victim,
- (3) the age of the victim,
- (4) the injury was not reasonably discoverable,
- (5) restitution or other collateral source was regularly being paid and then terminated,
- (6) postal service delays which are verifiable.

5. The victim must have suffered personal injury or death as a result of the criminal act of another.
6. The claimant and/or victim must to the extent able, have cooperated with law enforcement officials during their investigation.

The following issues may be considered when determining cooperation:

1. Failure to cooperate in the prosecution of the defendant or to appear as a witness.
2. Not cooperating initially but later deciding to cooperate and the delay allows

the defendant to escape prosecution.

3. Not cooperating initially but later deciding to cooperate without any good cause as to the delay.
 4. Causing extra or unnecessary effort on the part of law enforcement to gain prosecution.
 5. Reluctantly providing information pertaining to the crime; failing to appear when requested, without good cause; giving false or misleading information; or attempting to avoid law enforcement.
 6. Failing to prosecute or cooperate with law enforcement because of fear for his/her personal safety.
 7. Failing to give testimony or otherwise cooperate with the prosecutor's office.
 8. Failing to cooperate with Arkansas Crime Victims Reparations Board administrative staff by not returning requested information, not returning telephone calls, not providing accurate information, etc.
7. The net amount of compensation requested in the application must not have been paid by another source.
 8. The claimant and/or victim was not the offender or an accomplice of the offender. Claimant/victim may be denied if he/she has been engaged in an illegal activity during his/her victimization.

Illegal activity may consist of any of the following but is not limited to:

- (a) victim was buying drugs;
- (b) victim was using drugs;
- (c) victim was a minor and drinking alcohol;
- (d) victim was in an illegal place of business, such as a crackhouse, house of prostitution, or gambling establishment.

If claimant/victim contributed or was offender - compensation shall not be awarded to a claimant/victim who was the offender or an accomplice to the offender or who encouraged or in any way participated in the criminally injurious conduct. Compensation may be diminished to the extent or the degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the Board.

In determining the amount of an award, the Arkansas Crime Victims Reparations Board shall determine whether, because of his conduct, the victim of such crime or the intervenor contributed to the infliction of his injury or to his death, and the Board shall reduce the amount of the award or reject the claim altogether, in accordance with such determination.

Contribution is determined by the action portrayed by the victim at the time of or immediately preceding the crime. While there is no set formula for calculating the percentage of contribution to be assessed, the following factors should serve as a guideline:

- (1) If it appears that the victim was provoked by the defendant in a manner threatening bodily harm to the victim, and the victim acted in self defense, no contribution should be assessed.
- (2) If it appears that the victim was provoked by the defendant in a manner where bodily harm to the victim appeared unlikely, and the victim used poor judgment because of intoxication or other drug involvement, a 25% contribution factor should be assessed.
- (3) If it appears that the defendant was provoked by the victim in a manner where bodily harm appeared unlikely, a 50% contribution factor should be assessed.
- (4) If the victim is injured as a result of his conduct not being that of a prudent person, a 50% contribution factor should be assessed.
- (5) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant appears intentional, a 75% contribution factor should be assessed.
- (6) If it appears that the defendant was provoked by the victim in a manner where bodily harm to the defendant is unquestionable, a 100% contribution factor should be assessed and the claim denied.
- (7) If the victim is not wearing protective equipment as prescribed by law, a 25% contribution factor shall be assessed. This includes helmets, seat belts, etc.
- (8) If the victim was involved in drugs as verified by the police report or other official documents, a 100% contribution factor should be assessed and the claim denied.

9. The injury or death must not have been the result of negligent maintenance or use of a motor vehicle unless the acts are committed with the intent to inflict injury or death or unless the acts committed were in violation of the Omnibus DWI Act, A.C.A. § 5-65-101 et. seq. or A.C.A. § 27-53-101 (Leaving the scene of an accident involving serious injury or death.)
10. Claimant/victim has not been convicted of a felony involving criminally injurious conduct.
11. Awards shall not be made to a victim who is injured or killed while confined in state, county, or municipal jail, prison or other correctional facility as a result of conviction of any crime.
12. The award would unjustly benefit the offender or accomplice except as permitted by Rule 9 of the Arkansas Crime Victims Reparations Rules. (See Rule 9)
13. In those cases where the victim has died, the claimant will be considered to have no compensable loss for the expenses incurred by the victim as a result of the criminally injurious conduct if the claimant has no legal obligation to pay for these expenses.

Rule No. 9

UNJUST ENRICHMENT

1. No portion of a compensation award shall unjustly benefit the offender or accomplice. However, no award shall be denied solely on the basis of the victim's familial relationship to the offender or the presence of the offender in the household at the time of the award.
2. In determining whether or not an award would unjustly benefit the offender, the following factors should be considered:
 - a. The legal responsibilities of the offender to the victim and collateral resources available to the victim from the offender. Victims of family violence must not be penalized when collateral sources of payment are not viable.
 - b. Payments to victims of family violence that only minimally or inconsequentially benefit the offender.
 - c. The special needs of child witnesses to violence and child victims of criminal violence, especially when the perpetrator is a parent who may or may not live in the same residence.
3. Collateral resources available to the victim from the offender shall be considered when awarding a claim, however, the victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery.
4. Payments to third-party providers shall be made to prevent cash intended for the victim's bills to be used by or on behalf of the offender.
5. The Board shall not penalize child victims by denying or delaying payment when offender or collateral resources are not forthcoming.

Rule No. 10

MAXIMUM COMPENSATION AMOUNTS AND METHODS OF PAYMENTS

1. Compensation payable to a victim or claimant incurring expenses due to injury or death may not exceed a total of Ten Thousand Dollars (\$10,000.00). However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the maximum reparations amount shall not exceed \$25,000.
2. Compensation for funeral expenses of deceased victims may not exceed \$7,500.
 - a. Collateral sources of income such as burial policies, workers' compensation, etc. will be applied towards the total cost of the victim's funeral.
 - b. Life insurance may not be used as a collateral source when dependents of the deceased victim remain and may benefit from the proceeds of this policy.
 - c. Life insurance will be utilized as a collateral source and be applied against funeral expenses in those cases involving no surviving dependents.
3. The Board may provide for the payment to a claimant in a lump sum or in installments.
4. The Board shall pay all or part of an award directly to service providers unless evidence of prior payment for services is submitted.
5. The Board may also provide for payment of legal fees, not to exceed Two Hundred Fifty Dollars (\$250) - plus filing fees, of a guardianship when an award has been made to a minor child as per Rule 18 of the Arkansas Crime Victims Reparations Board Rules. Legal services expenses shall not be deducted from the otherwise compensable amount unless amount is over \$10,000.
6. Upon request of the claimant, the Board may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board of either of the following:
 - a. That the award in a lump sum will promote the interests of the claimant;
 - b. That the present value of all future economic loss does not exceed One Thousand Dollars (\$1,000).
7. An award payable in installments for future economic loss may be made only for a period that the Board can reasonably determine future economic loss and may be modified by the Board upon finding that a significant change in circumstances has occurred.
8. Approved claims will be paid in the order of their approval by the Board as funds become available.

Rule No. 11

APPLICATION REVIEW PROCEDURE

1. A victim, dependent of a victim, or person legally acting in behalf of the victim, must first secure a copy of the official Victims Reparations Application Form from their local prosecuting attorney's office, law enforcement agency, victim/witness coordinator, service provider or from the Board. Assistance in completing the form may be provided by the victim/witness coordinator or the prosecuting attorney's staff in districts that have no victim/witness coordinator. The Crime Victims Reparations Board staff will also be available to assist in the completion of the form.
2. A form must be completed in its entirety, and accompanied with an itemized statement and police offense report or other official documentation from the agency to which the incident was reported.
3. A victim must submit a Victims Reparations Application as a necessary (but not sufficient) condition of directly receiving payment. The Board may directly reimburse a medical-care provider for costs associated with a sexual-assault testing kit, even in the absence of a victim's application. Such costs, which include those associated with testing for sexually transmitted diseases, may be reimbursed regardless of which fund or cost center is used to make the reimbursement.
4. The staff of the Board shall log the application as being received and begin a thorough review and verification process.
5. The Board and staff have the authority to conduct investigations and/or request any additional information from the victim, the investigating law enforcement agency, medical personnel and/or facilities, witnesses, employers and others as may be deemed necessary for the proper review and verification of the application.
6. The staff shall make a thorough analysis of the application and attachments, then prepare staff comments relative to the application which shall be filed in the application folder along with supportive data that is pertinent to the investigation.
7. The administrative staff shall have the authority to review and decide crime victim reparations claims up to the maximum allowable amount of Ten Thousand Dollars (\$10,000) or Twenty-five Thousand Dollars (\$25,000) for victims whose injuries are catastrophic and result in a total and permanent disability.
8. The administrative staff of the Board shall then make a decision regarding the claim. The claimant/victim shall be mailed notification of the administrative decision within fifteen (15) calendar days by mail. If the claim is denied the claimant/victim will be notified by certified mail, return receipt requested.

9. The claimant shall have the right to appeal decisions of the Board in the manner set forth in Rule No. 14, APPEALS PROCEDURE.

Rule No. 12

ADVANCE (EMERGENCY) AWARD OF COMPENSATION

The Board may make or authorize the Administrator to make an advance (emergency) award of compensation to the claimant/victim prior to taking action on an application and pending a final decision when it appears the claim is one for which compensation is probable and undue hardship will result to the claimant/victim if immediate payment is not made. The claimant/victim may request in the application that consideration be given for an advance award and provide justification for such award. A decision denying emergency relief shall not be appealable.

The amount of such advance (emergency) award shall not exceed Five Hundred Dollars (\$500). Any advance award shall be deducted from the final compensation made to the claimant/victim. If the final award amount is less than the amount of the advance award, the claimant/victim must repay the excess to the Board. If an emergency award is made and the claimant/victim later does not follow through with prosecution or some other requirement of this program, the claimant/victim will be required to reimburse the Board for the amount of the award made.

Criteria for payment of emergency awards is listed below:

- a. Claimant/victim is without an income at the time of application resulting in loss of food, heat or shelter.
- b. Claimant/victim cannot receive emergency service (i.e. burial) without the emergency payment.

Documentation required:

- a. Proof of financial emergency should be obtained for the file such as notice of eviction from the landlord or a shut-off notice from the power company.
- b. If no proof is available, then the investigator should note in file why he/she thinks the application is considered an emergency.
- c. There must be contact with the investigating law enforcement officer to verify what occurred, the victim's innocence and the victim's cooperation. A law enforcement offense report and Crime Victims Reparations Board Law Enforcement Form must be included in the file.
- d. For wage loss claims, the employer may be contacted by telephone but the written verification must follow to go in the file. If self-employed applicant must provide a copy of his/her last three (3) years tax return or check stubs for the last three (3) months as proof of his/her income. If proof is not available, lost wages can not be considered.

- e. If the injury is not commensurate with the time lost from work, a doctor's excuse will be required.
- f. Claimant/victim is required to sign a promissory (demand) note which must be signed and executed by the claimant/victim with the Administrator prior to receiving the emergency award.

Rule No. 13

APPEALS PROCEDURE

1. In the event an application for compensation is approved in a modified form or denied, the administrative staff of the Board shall notify the claimant/victim by certified mail, return receipt requested, within fifteen (15) calendar days setting forth the basis of the decision.
2. The claimant/victim shall have the right to appeal and may do so by notifying the administrative staff of the Board, in writing, by certified mail, return receipt requested, of the intent to appeal within forty-five (45) calendar days of the date of the notification letter setting forth the Board's decision.
3. The claimant/victim shall then be entitled to a formal hearing before the Board. The hearing shall be held within ninety (90) calendar days of the date of the notice from the claimant/victim stating the intent to appeal.
4. The claimant/victim or an authorized representative, in the event the claimant/victim is incapacitated must be present at the appeal hearing. In an appeals hearing, all parties shall be afforded an opportunity to appear and be heard. A record of the proceedings shall be made and shall be transcribed upon request of any party, who shall pay transcription costs unless otherwise ordered by the Board.
5. Notification of Board meetings shall be made in compliance with Arkansas Code Annotated § 25-19-101 - 25-19-107 - the Arkansas Freedom of Information Act.
6. All agendas and supporting documentation necessary shall be mailed to the Board ten (10) calendar days in advance of the Board meeting.
7. The Board may, without a hearing, settle a claim by stipulation, agreed settlement, consent order or default.
8. The Board shall render its decision relative to the appeal within ten (10) calendar days of the formal hearing and the claimant/victim will be notified by mail.
9. The claimant/victim, if not successful in the appeal to the Board shall then have thirty (30) days from the receipt of the decision to file a petition for judicial review pursuant to Arkansas Code Annotated 25-15-212 in the circuit court of his/her county of residence or in Pulaski County.

Rule No. 14

PENALTY FOR FALSE CLAIMS

The filing of a false claim for compensation pursuant to the Arkansas Crime Victims Reparations Act shall constitute a Class D Felony. If a victim or a claimant knowingly files a false claim or provides false information or fails to provide material facts or circumstances necessary to substantiate the claim, he/she may not at a later date, file a correct claim. If this happens, the claim shall be denied.

Rule No. 15

BOARD STAFF

The Administrator of the Board shall be the Chief Executive Officer of the Board staff. He/she shall be hired by the Secretary of the Department of Public Safety with the advice and consent of the Board. He/she shall be responsible for the administration of the rules, policies and procedures promulgated by the Board, pursuant to the Administrative Procedure Act, and within such restraints as mandated by statute.

The Administrator shall also be responsible for employment, supervision, evaluation and termination of Board employees and shall delegate appropriate powers and duties to them, subject to the advice and/or consent of the Secretary and the Board.

Rule No. 16

CLAIMS OF INCOMPETENTS OF MINOR CHILDREN

Proof of the establishment of the guardianship may be required by the Board prior to release of funds to the claimant. A certified copy of the Order of Guardianship shall be sufficient proof.

Rule No. 17

AMENDMENT TO RULES

Any modification or amendment to the Rules of the Board shall be made pursuant to the procedure as outlined in the Arkansas Administrative Procedure Act.

Rule No. 18

COST CEILING ON MEDICAL BILLS

In connection with claims for payment on medical bills, not covered by insurance, made by victims, the Board will award up to 65% of medical bills, not to exceed a total reimbursement of \$10,000. However, for those victims whose injuries are catastrophic and result in a total and permanent disability, the total reimbursement shall not exceed \$25,000.

The provider of medical services to whom the award is made will be notified that by accepting the payment of 65% of their bill, they are agreeing not to commence civil actions against the victim or his legal representative to recover the balance due under the bill.

Acceptance of payment for services paid by the Arkansas Crime Victims Reparations Board shall be considered payment in full and bars any legal action for collection.

Rule No. 19

COST CEILING ON MENTAL HEALTH BILLS

1. In connection with claims for payment of mental health services, not covered by insurance, incurred by victims, the Board will pay a maximum of twenty-five Hundred Dollars (\$2500) or provide for six (6) months, whichever occurs first, provided the treatment plan is submitted within thirty (30) days of the application to the Board for those victims receiving ongoing therapy or within thirty (30) days of beginning therapy for those victims who seek mental health treatment after making application to the board. This treatment plan must state the basis for the necessity of such treatment, the anticipated extent of the treatment, and the relationship of the treatment to the crime perpetrated upon the victim and whether or not the diagnosis is related to a pre-existing condition.
2. A mandatory review by the Board is required after ninety (90) or twenty-five hundred dollars (\$2500), whichever occurs first, should the victim of the provider find that further services are required.
 - a. The provider will be required to submit a new treatment plan to justify the continued need for the treatment and its continued relationship to the crime.
 - b. The Board may waive the maximum upon a justification of special need based upon documentation to be submitted by the provider.
 - c. The Board also reserves the right to have any mental health claims and treatment plans reviewed by an independent peer review committee should it so desire.

Rule No. 20

CONFLICT OF INTEREST

No member of the Board shall use such appointment for purposes which are motivated by private gain, including gain for providers, claimants, or victims with which the board member is associated within any capacity. There shall exist a conflict of interest when a provider, claimant, or victim with whom the board member is associated with appears before the board in the course of business of the board.

When such a conflict arises for a member, the individual member should declare the conflict. Additionally, any member of the Board who questions whether or not another member has a conflict of interest in the matter under discussion may ask for a determination by the Board. If the Board finds that a conflict exists, the affected member shall also follow the aforementioned procedure.

Any member of the Board who declares a conflict of interest, or who is found to have a conflict, should neither participate in debate nor vote on the issue in question.

A conflict of interest shall exist among members of the administrative staff in any case where a member of the Department of Public Safety's staff or a person related, whether by blood, adoption, or marriage within the second degree of consanguinity to a member of the Department of Public Safety's staff is the claimant or victim on a claim for compensation.

Additionally, the administrator of the Board and the staff attorney may determine that a conflict of interest exists on claims where one or more members of the administrative staff know the claimant or victim.

Administrative staff members shall immediately notify the administrator when another member of the Department of Public Safety's staff or someone whom they believe is known by one or more members of the administrative staff has filed a claim.

In the event that a conflict arises or exists among all members of the administrative staff, the administrative staff may gather necessary information and present the application and attachments to the Board, but shall not participate in the debate, nor vote on the claim in question.

The administrative staff shall also immediately notify the administrator when such staff members knows the victim or claimant on a particular claim.

If only one staff member is determined to have a conflict, then that staff member shall not participate in the debate, nor vote on the claim in question. If that staff member has been assigned to investigate the claim, then the administrator shall immediately re-assign the claim to another investigator.

Rule No. 21

SUPPLEMENTAL AWARDS

If at the time of the application, the victim or claimant was unable to submit all of the itemized bills, he/she may submit supplemental bills to be considered after the original award. If a victim or claimant has been awarded their original claim at a reduced amount due to contribution, then the Board will note at the time of approval whether or not they will consider any supplemental awards concerning this claim. If the Board determines that supplemental awards will not be considered after the initial award, the Board shall so note at the time of the initial award. Each case will be considered on its own merits.

The total of the original award and any and all supplemental awards may not exceed \$10,000.

Supplemental awards may be paid quarterly.

Supplemental bills will be considered only if submitted within one year of:

- a. The date of treatment, or
- b. Notification of payment or denial by a collateral source.

Rule No. 22

FINANCIAL OBLIGATION REQUIREMENT

Reparations shall not be awarded to any victim/claimant who owes a financial obligation ordered or imposed as a result of a previous criminal conviction until the board receives information or materials establishing to the satisfaction of the board that the financial obligation has been satisfied. If the board does not receive the information or materials within six months after the board notifies the victim/claimant, the application will be closed and the victim notified of their right to appeal.