

Special State Statutory Provisions for Victims of Crime

Information and Notification

Information on Protections for Crime Victims – Executive Law §§625-a, 625-b, 641, 642

Requires informational pamphlets, booklets and necessary claim forms for crime victim compensation to be available at every police precinct and location where a crime may be reported. After reporting a crime, a victim must be informed of available assistance. The Division of Criminal Justice Services (DCJS) and the Crime Victims Compensation Board (CVB) must develop and implement a standardized procedure to be used by law enforcement to notify victims about their rights and services. Every police primary investigation report shall indicate whether a victim has been informed of their rights. DCJS and CVB must also devise a standardized form for use by district attorney offices for the purpose of documenting notification compliance. Each district attorney must complete and submit the report to the CVB annually.

* Standardized forms provision, effective January 1, 2007

Notification of Defendant Status – Executive Law §641(3); Criminal Procedure Law §§380.50(4), (5), 440.50

Entitles survivors to be informed of judicial proceedings relating to their case, including the arrest, arraignment, release and trial sentencing of the defendant; case disposition and terms of imprisonment; and the escape, absconding, discharge, parole, conditional release or release of the person imprisoned. If the final disposition of the case results in the commitment of the defendant to the custody of the State Department of Correctional Services (DOCS), the victim shall also receive notice of his or her right to submit a written, audiotaped or videotaped victim impact statement to the Parole Board. The victim must provide current contact information to prosecutor.

Notification on the Escape of a Mentally Ill Defendant – Criminal Procedure Law §330.20(19)

Requires the mental health facility to notify the victim and any other person the facility staff believes to be in danger of the escape of a defendant in its custody.

Victim Information and Notification Everyday (VINE) – Jenna’s Law – Chapter 1, Laws of 1998 §42; Information Pamphlet from District Attorney – Executive Law §646-a(2)(g)

Creates an automated telephone system providing a victim or any member of the general public with information concerning an inmate’s prison status and release data. (Call the DOCS toll-free number at 1-888-VINE 4NY.) In addition, the pamphlet, which is produced by DCJS with CVB for district attorney offices to advise victims of their rights, must include information on the VINE program and the Division of Paroles’s toll-free telephone number for information on the status of the defendant.

Financial Assistance

Compensation – Executive Law §§621, 626, 631(8)

Establishes that certain victims of crime (e.g., victims who were physically injured as a result of the crime or those under 18, 60 or over or disabled who were not physically injured) may be eligible for compensation from the CVB to reimburse for **out-of-pocket** expenses including medical or other services enumerated in the law:

- Rehabilitative and/or occupational training
- Domestic violence shelter services
- Loss of earnings or support not to exceed \$30,000
- Burial expenses not to exceed \$6,000 of a victim who died directly as a result of a crime
- Costs of crime clean-up and securing a crime scene not to exceed \$2,500
- Transportation costs for visits to the court
- Repair or replacement of essential personal property lost, damaged, or destroyed, not to exceed \$500 (except for victims of crime who acted as good samaritans, who are eligible to receive up to \$5,000 in compensation)
- Reasonable attorney's fees for representation before the Board not to exceed \$1,000
- Replacement of a driver's license, permit, registration and number of plates lost or destroyed as a result of a crime
- Relocation or moving expenses up to \$2,500

The definition of out-of-pocket loss for crime victim compensation from the CVB includes expenses incurred by a victim for medical care or other services as a result of the exacerbation of a pre-existing disability or condition directly resulting from or related to the crime.

Eligibility and Filing of a Claim with CVB – Executive Law §§ 624, 625

A victim of a crime; certain relatives and dependents, including surviving spouse, child, parent, sibling, stepbrother or stepsister, stepparent or person primarily dependent on the victim for support; those who paid for burial costs for an innocent crime victim; child victims, a child who witnesses a crime and the child's parent, guardian, or siblings may be eligible for compensation from the CVB. Victims of terrorist acts outside of the U.S. who are residents of New York State may also apply for compensation. If the victim is under the age of 18, an incompetent, or a conservatee, the claim may be filed by a relative, guardian or attorney. Provision limits the time to file a claim to a year after the incident or discovery of the crime. The CVB may extend the time for filing a claim provided good cause is demonstrated.

Emergency Award – Executive Law §630

Provides that certain crime victims may be eligible to receive an emergency award of up to \$1,500 dollars (\$500 for each award), which is deducted from any final award made to the claimant by CVB.

Expedited Claim Processing for Livery Cab Drivers – Executive Law §§627(6), 631(3), (4)

Requires CVB to review claims filed by livery cab drivers on an expedited basis, within 30 days of receipt. Awards for loss of earnings by a livery operator are for the period of time the Board determines that the driver is unable to work and has lost earnings, in an amount not to exceed \$20,000. Because undue hardship may result, any emergency award will be granted without reduction of workers' compensation benefits.

Confidentiality of CVB Records – Executive Law §633

Requires CVB to keep all claims, records and proceedings confidential with some exceptions such as for criminal justice purposes or judicial subpoenas.

Restitution and Reparation – Penal Law §60.27

Authorizes the court to order a convicted defendant to pay restitution to a victim of crime who has suffered injuries, economic losses or damages from the “fruits of the offense” or to pay reparation for the actual out-of-pocket loss. At or before the time of sentencing, the district attorney must advise the court of the victim’s request and inform the court of the extent of economic loss. A victim must advise the district attorney’s office that she or he seeks restitution or reparation. The district attorney will assist the victim in preparing a victim impact statement as part of the pre-sentence report (*Criminal Procedure Law §390.30(3)(b)*) explaining to the court the reasons and amount requested by the victim. Upon submitting the necessary documents showing the victim’s losses, the district attorney is under an obligation to petition the court to order restitution. Documents submitted to the court concerning defendant’s sentencing including pre-sentencing reports must be kept confidential (*Criminal Procedure Law §390.50*). The amount of restitution or reparation cannot exceed the costs of the crime. Except upon consent of the defendant, or as a condition of probation or conditional discharge, the amount of restitution or reparation will not exceed \$15,000, in the case of a felony, \$10,000 in the case of an offense other than a felony and \$1,000 for a juvenile. In the event restitution or reparation is not ordered, the court must clearly state its reasons on the record.

Civil Action Against Perpetrator – Civil Practice Law and Rules §§213-b, 215(3), (8)

Provides that a victim may bring a civil action against the convicted perpetrator who harmed them within seven years of the commission of the crime. In the case of a defendant convicted of a specified serious crime (e.g., violent felonies), a victim may sue the defendant within 10 years of the date of the perpetrator’s conviction. A victim may also bring a civil proceeding to recover damages for assault within one year of the commission of the crime. Additionally, the law provides

that a victim may sue the perpetrator within one year of the termination of the criminal action, whether it ended in conviction or acquittal.

Civil Action Against Perpetrator for Profits of Crime –“Son of Sam Law” – Executive Law §632-a

Provides that convicted criminals, during imprisonment and in some cases after release, may be held accountable financially to the victims of their crimes. Allows victims to sue the convicted criminal who harmed them within three years of the discovery of any profits of the crime (e.g., money derived from the crime that injured the victim). In cases of specified crimes (e.g., violent felonies), victims may also seek damages from money or property that the offender has acquired from other sources (e.g., gifts, income). The law requires any person who provides or receives funds on behalf of an inmate or offender to give notice to CVB on behalf of the victim, which is published in a newspaper.

Fee Waiver – Vehicle and Traffic Law §§401(3)(c), 503(3)(ii)

Authorizes the Commissioner of the Department of Motor Vehicles to waive the payment of fees for the replacement of a driver's license, permit, registration and number plates which are lost or destroyed as a result of a crime.

Access to Justice

Fair Treatment Standards – Executive Law Article 23

Sets forth a range of requirements for the treatment of victims in all aspects of the criminal justice system, including notification to the victim of the availability of crime victim compensation and victim assistance programs, of the stages of the judicial proceedings and of the steps that law enforcement can take to protect victims from intimidation.

Free Copy of Police Report – Executive Law §646

Entitles victims of crime to receive a free copy of the police report relating to the crime.

Property Return – Executive Law §642(3)

Requires a victim's property held for evidentiary purposes to be promptly returned, unless there is a compelling reason, relating to trial, for it to be retained.

Victim Impact Statement and Confidentiality – Criminal Procedure Law §§380.50, 390.20, 390.30, 390.50

Victims or their families may address the court on any matter relevant to sentencing, when a defendant has committed a felony so long as they give the court 10 days notice. Generally, a judge cannot sentence a defendant convicted of a felony or a misdemeanor to 90 days or more in jail or

to a sentence of probation without having received a pre-sentence investigation report prepared by the Department of Probation. Unless irrelevant, the report must contain a victim impact statement with information regarding the extent of injury or economic loss, the actual out-of-pocket loss and the views of the victim relating to disposition, including the amount of restitution and reparation sought by the victim. Any documents submitted to the court for the purpose of sentencing must be kept confidential. Prior to sentencing, the victim or victim's family must be given a copy of the victim impact statement from the prosecutor. The prosecutor shall also give at least 21 days notice to the victim of the date of sentencing and inform him or her of the right to speak at sentencing.

Victim Impact Statement to Parole Board – Criminal Procedure Law §440.50(1); Executive Law §259-i (2)(c)

Enables a crime victim to make a statement before the Parole Board, which may include information on threatening or intimidating conduct toward the victim, victim's representative or family member, made by the offender or by a person who is directed by the defendant. The statement may be audiotaped or videotaped, and the victim's or victim's representative's identity, including name and address, must be kept confidential.

Protection from Intimidation – Penal Law §§ 215.15, 215.16, 215.17

Protects survivors and witnesses from being intimidated, threatened or harassed or having his or her property damaged by a defendant or anyone associated to the defendant. A defendant will face additional criminal charges to the ones she or he already faces.

Secure Waiting Area – Executive Law §642(2)

Requires that crime victims and other prosecution witnesses, where possible, be provided with a private room separate from the defendant and other witnesses awaiting a scheduled courtroom appearance.

Tampering with a Witness – Penal Law §§215.10, 215.11, 215.12, 215.13

Prohibits interference with the participation of a witness in a criminal proceeding by making that conduct a crime.

NYS Sex Offender Registration Act and Registry – Megan's Law – Correction Law Article 6-C (§168 et seq.)

Enables survivors as well as the public to obtain information regarding the status of registered sex offenders through a free hotline (1-800-262-3257), an online subdirectory (http://criminaljustice.state.ny.us/nsor/search_index.htm) or through police authorities. (*See Sexual Assault Section.*)

Medical and Health Services

Medical and Counseling Services – Executive Law §631

Provides that certain victims of crime and family members may qualify for medical or other related services not covered by insurance, including counseling services, through CVB.

Insurance Policies and Orders of Protection – Insurance Law §2612(f), (g)

Prohibits an insurance company who receives a valid order of protection against another person covered by the same policy from disclosing the address and telephone number of the victim to such person.

Workplace Provisions

Employment and Credit Services – Executive Law §642(4)

Upon a victim's request, the district attorney or local police department must explain to the victim's employer that the need for cooperation in the prosecution of the case may necessitate absence from work. In addition, where the victim is unable to meet obligations to a creditor, the district attorney or law enforcement agency should provide information about the circumstances of the crime, including the nature of any loss or injury suffered by the victim.

Protections against Employment Termination – Penal Law §215.14

Protects victims from being penalized or fired by an employer on account of their absence because they cooperated in prosecuting a criminal case by meeting with the district attorney, testifying at a criminal proceeding or exercising any other rights or protections afforded under the law. The victim must give prior day notice and the employer may withhold wages during the period of absence. An employer who violates this provision may be found guilty of a class B misdemeanor.

Protections for Elderly or Disabled Victims

Eligibility for Financial Assistance under CVB – Executive Law §§620(22), 631(8)

Provides that an elderly (60 or older) or disabled victim of a crime who has suffered a loss or damage to personal property, but not a physical injury as a direct result of the crime, may qualify for financial assistance through CVB. Compensation may cover financial counseling, unreimbursed costs of mental health counseling, settling estates, handling guardianship concerns, replacement of essential personal property and transportation expenses incurred for court.

Reporting Financial Exploitation of the Elderly – Social Services §473(5)

Requires social services officials or designees authorized to determine the need for protective services to adults to report to law enforcement if they suspect that an elderly person is a victim of financial exploitation or other hazard.

Reporting Abuses of Persons Receiving Care or Services in Residential Health Care Facilities – Public Health Law §2803-d

Requires any residential health care facility operator, employee or medical staff member who has reasonable cause to believe that a patient has been physically abused, mistreated or neglected to report such act, unless the abuse is by another patient, to the Department of Health.

Coordination Law Enforcement Elder Abuse – Executive Law §844-b

Requires police to send a copy of the domestic violence incident report form to the New York State Committee for the Coordination of Police Services to Elderly Persons. The committee is required to report annually to the Legislature on the incidence of such reports and to recommend policies and programs to assist law enforcement, the courts and CVB in helping victims. (*See Domestic Violence Section.*)

Endangering the Welfare of an Incompetent or Physically Disabled Person & Elderly Vulnerable Person – Penal Law §§260.30, 260.32, 260.34

Creates felony level penalties against any person who assumes responsibility of taking care of an elderly person or receives monetary or other valuable compensation for providing care to such person and is found guilty of endangering the welfare of an elderly vulnerable person.

State DNA Identification Index – Executive Law §995(7)

Requires persons convicted of all felonies and certain misdemeanors including endangering the welfare of an incompetent or physically disabled person and/or an elderly vulnerable person to submit a sample of their DNA to the State databank. (*See Sexual Assault Section.*)

Enhanced Civil Penalty for Elderly Victims of Fraud – General Business Law §349-c

Authorizes the court to increase the civil penalty, not to exceed \$10,000, against a person convicted of committing illegal, deceptive or fraudulent business practices against one or more elderly persons (65 years of age or older). The elderly victim fund consisting of these supplemental civil penalties is administered and used by the Department of Law for the investigation and prosecution of consumer frauds against elderly persons.