

ADVISORY BULLETIN

TRANSMITTAL NO. 2017-02

TO: ALL FUNDED PROGRAMS
ADVISORY COUNCIL MEMBERS

FROM: ELIZABETH CRONIN, ESQ.
DIRECTOR

SUBJECT: CHANGES TO OVS ENACTING STATUTE

DATE: October 4, 2017

As you may know, this year there have been significant changes made to OVS' enacting statute. Two of these changes were signed into law as part of the 2017-18 State Budget and ***take effect for all claims filed on or after October 17, 2017.***

IT IS CRUCIAL THAT OUR PARTNERS HAVE, AND PROVIDE THE CORRECT INFORMATION TO ALL CURRENT AND POTENTIAL OVS CLAIMANTS. These changes are ***not applicable*** to claims filed prior to the effective date and such pre-existing claims cannot be reopened for consideration of these new provisions. OVS will have new claim investigation procedures in place once these changes become effective.

These two changes include (1) the expansion of those eligible for non-personal injury (PI) crimes and (2) an expansion to the type of financial losses/eligible victims eligible for reimbursement.

(1) Subdivisions 11 and 12 of section 631 of the Executive law have been broadened to cover more non-PI crimes. Subdivision 11 will include additional menacing, criminal mischief, and robbery charges. Subdivision 12 will broaden the harassment and criminal contempt charges, include hate crime charges and also include the costs of securing a crime scene. **The details of these changes are in Part G of the attached bill text.**

(2) A new category of loss has been created to include "loss of savings" for a new group of eligible claimants who are considered vulnerable elderly or incompetent or physically disabled persons. Like loss of earnings and support, this loss is capped at \$30,000, but will be limited to the most vulnerable victims. Vulnerable elderly or incompetent or physically disabled persons are defined in the law as those who are unable to care for themselves. This change is for a distinct population and it is important that VAPs do not give potential claimants unrealistic expectations. **The details of these changes are in Part H of the attached bill text.**

OVS investigators will work with law enforcement and/or District Attorneys' Offices to gather the information we need to make eligibility and other claim determinations.

General questions related to the implementation of these changes should be directed to Crime Victim Specialist III, Karen Senez at (518) 457-8060.

On behalf of the New York State Office of Victim Services, thank you for your commitment to providing the highest quality services to innocent victims of crime in New York State.

A handwritten signature in cursive script, appearing to read "Elizabeth Cronin".

Elizabeth Cronin, Esq.
Director

12

PART G

13 Section 1. Subdivisions 11 and 12 of section 631 of the executive law,
14 subdivision 11 as added by chapter 543 of the laws of 1995 and subdivi-
15 sion 12 as amended by chapter 188 of the laws of 2014, are amended to
16 read as follows:

17 11. Notwithstanding the provisions of subdivisions one, two and three
18 of this section, an individual who was a victim of either the crime of:
19 menacing in the second degree as defined in subdivision one of section
20 120.14 of the penal law; menacing in the third degree as defined in
21 section 120.15 of the penal law; unlawful imprisonment in the first
22 degree as defined in section 135.10 of the penal law~~[7]~~; kidnapping in
23 the second degree as defined in section 135.20 of the penal law ~~[or]~~;
24 kidnapping in the first degree as defined in section 135.25 of the penal
25 law; criminal mischief in the fourth degree as defined in subdivision
26 four of section 145.00 of the penal law; robbery in the third degree as
27 defined in section 160.05 of the penal law; robbery in the second degree
28 as defined in subdivision one, paragraph b of subdivision two or subdivi-
29 vision three of section 160.10 of the penal law; or robbery in the first
30 degree as defined in subdivisions two, three and four of section 160.15
31 of the penal law who has not been physically injured as a direct result
32 of such crime shall only be eligible for an award that includes loss of
33 earnings ~~[or support]~~ and the unreimbursed costs of counseling provided
34 to such victim on account of mental or emotional stress resulting from
35 the incident in which the crime occurred.

36 12. Notwithstanding the provisions of subdivisions one, two and three
37 of this section, an individual who was a victim of either the crime of
38 menacing in the second degree as defined in subdivision two or three of
39 section 120.14 of the penal law, menacing in the first degree as defined
40 in section 120.13 of the penal law, criminal obstruction of breathing or
41 blood circulation as defined in section 121.11 of the penal law, harass-
42 ment in the second degree as defined in ~~[subdivision two or three of]~~
43 section 240.26 of the penal law, harassment in the first degree as
44 defined in section 240.25 of the penal law, aggravated harassment in the
45 second degree as defined in subdivision three or five of section 240.30
46 of the penal law, aggravated harassment in the first degree as defined
47 in subdivision two of section 240.31 of the penal law, criminal contempt
48 in the first degree as defined in ~~[paragraph (ii) or (iv) of]~~ subdivi-
49 sion (b) or subdivision (c) of section 215.51 of the penal law, or
50 stalking in the fourth, third, second or first degree as defined in
51 sections 120.45, 120.50, 120.55 and 120.60 of the penal law, respective-
52 ly, or a hate crime as defined in section 485.05 of the penal law who
53 has not been physically injured as a direct result of such crime shall
54 only be eligible for an award that includes loss of earning or support,

1 the unreimbursed cost of repair or replacement of essential personal
2 property that has been lost, damaged or destroyed as a direct result of
3 such crime, the unreimbursed cost for security devices to enhance the
4 personal protection of such victim, transportation expenses incurred for
5 necessary court ~~[expenses]~~ appearances in connection with the prose-
6 cution of such crime, the unreimbursed costs of counseling provided to
7 such victim on account of mental or emotional stress resulting from the
8 incident in which the crime occurred, the unreimbursed cost of securing
9 a crime scene, reasonable relocation expenses, and for occupational or
10 job training.

11 § 2. This act shall take effect on the one hundred eightieth day after
12 it shall have become law, and apply to all claims filed on or after such
13 effective date.

14 PART H

15 Section 1. Subdivision 5 of section 621 of the executive law, as
16 amended by chapter 74 of the laws of 2007, is amended to read as
17 follows:

18 5. "Victim" shall mean (a) a person who suffers personal physical
19 injury as a direct result of a crime; (b) a person who is the victim of
20 either the crime of (1) unlawful imprisonment in the first degree as
21 defined in section 135.10 of the penal law, (2) kidnapping in the second
22 degree as defined in section 135.20 of the penal law, (3) kidnapping in
23 the first degree as defined in section 135.25 of the penal law, (4)
24 menacing in the first degree as defined in section 120.13 of the penal
25 law, (5) criminal obstruction of breathing or blood circulation as
26 defined in section 121.11 of the penal law, (6) harassment in the second
27 degree as defined in section 240.26 of the penal law, (7) harassment in
28 the first degree as defined in section 240.25 of the penal law, (8)
29 aggravated harassment in the second degree as defined in subdivision
30 three or five of section 240.30 of the penal law, (9) aggravated harass-
31 ment in the first degree as defined in subdivision two of section 240.31
32 of the penal law, (10) criminal contempt in the first degree as defined
33 in subdivision (b) or subdivision (c) of section 215.51 of the penal
34 law, (11) stalking in the fourth, third, second or first degree as
35 defined in sections 120.45, 120.50, 120.55 and 120.60 of the penal law,
36 (12) labor trafficking as defined in section 135.35 of the penal law, or
37 ~~[-5]~~ (13) sex trafficking as defined in section 230.34 of the penal
38 law; a vulnerable elderly person or an incompetent or physically dis-
39 abled person as defined in section 260.31 of the penal law who incurs a
40 loss of savings as defined in subdivision twenty-four of this section;
41 or a person who has had a frivolous lawsuit filed against them.

42 § 2. Section 621 of the executive law is amended by adding a new
43 subdivision 24 to read as follows:

44 24. "Loss of savings" shall mean the result of any act or series of
45 acts of larceny as defined in article one hundred fifty-five of the
46 penal law, indicated by a criminal justice agency as defined in subdivi-
47 sion one of section six hundred thirty-one of this article, in which
48 cash is stolen from a vulnerable elderly person or an incompetent or
49 physically disabled person as defined in section 260.31 of the penal
50 law.

51 § 3. Subdivision 2 of section 631 of the executive law, as amended by
52 chapter 162 of the laws of 2008, is amended to read as follows:

53 2. Any award made pursuant to this article shall be in an amount not
54 exceeding out-of-pocket expenses, including indebtedness reasonably

1 incurred for medical or other services necessary as a result of the
2 injury upon which the claim is based; loss of earnings or support
3 resulting from such injury not to exceed thirty thousand dollars; loss
4 of savings not to exceed thirty thousand dollars; burial expenses not
5 exceeding six thousand dollars of a victim who died as a direct result
6 of a crime; the costs of crime scene cleanup and securing of a crime
7 scene not exceeding twenty-five hundred dollars; reasonable relocation
8 expenses not exceeding twenty-five hundred dollars; and the unreimbursed
9 cost of repair or replacement of articles of essential personal property
10 lost, damaged or destroyed as a direct result of the crime. An award for
11 loss of earnings shall include earnings lost by a parent or guardian as
12 a result of the hospitalization of a child victim under age eighteen for
13 injuries sustained as a direct result of a crime. In addition to the
14 medical or other services necessary as a result of the injury upon which
15 the claim is based, an award may be made for rehabilitative occupational
16 training for the purpose of job retraining or similar employment-orient-
17 ed rehabilitative services based upon the claimant's medical and employ-
18 ment history. For the purpose of this subdivision, rehabilitative occu-
19 pational training shall include but not be limited to educational
20 training and expenses. An award for rehabilitative occupational training
21 may be made to a victim, or to a family member of a victim where neces-
22 sary as a direct result of a crime.

23 § 4. Section 631 of the executive law is amended by adding a new
24 subdivision 3-a to read as follows:

25 3-a. Any award made for loss of savings shall, unless reduced pursuant
26 to other provisions of this article, be in an amount equal to the actual
27 loss sustained.

28 § 5. Subdivision 5 of section 631 of the executive law is amended by
29 adding a new paragraph (f) to read as follows:

30 (f) Notwithstanding the provisions of paragraph (a) of this subdivi-
31 sion, the office shall disregard for this purpose the responsibility of
32 the victim for his or her own loss of savings.

33 § 6. Section 631 of the executive law is amended by adding a new
34 subdivision 8-a to read as follows:

35 8-a. Notwithstanding the provisions of subdivision one of this
36 section, a vulnerable elderly person or an incompetent or physically
37 disabled person, as defined in section 260.31 of the penal law, who has
38 not been physically injured as a direct result of a crime, shall be
39 eligible for an award that includes loss of savings.

40 § 7. This act shall take effect on the one hundred eightieth day after
41 it shall have become a law, and shall apply to all claims filed on or
42 after such effective date.