

ADVISORY BULLETIN

TRANSMITTAL NO. 2020-01

TO: ALL FUNDED PROGRAMS
ADVISORY COUNCIL MEMBERS

FROM: ELIZABETH CRONIIN, ESQ.
DIRECTOR

SUBJECT: Executive Law Updates

DATE: February 14, 2020

As you may know, during 2019 there were changes made to OVS' enacting statute to benefit crime victims. These changes described below relate to the eligibility of "child victims" and victims of unlawful surveillance crimes and ***take effect for all claims filed on or after February 17, 2020.***

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. The new laws are attached to the end of this notice.

Child Victims (Chapter 178 of the Laws of 2019) This new law expands the definition of "child victim" to include victims less than 18 years old, who suffer physical, mental or emotional injury, loss or damage as a result of any violation enumerated in Article 22 of the Executive Law - committed against or witnessed by such child.

Under OVS' enacting statute, to be eligible for reimbursement for crime-related expenses, one must be a victim of a crime (i.e., a misdemeanor or felony) unless otherwise stated. There is currently one violation enumerated in subdivision 12 of section 631 of the Executive Law. The previous definition of "child victim," however, conflicted with that, stating that they be a victim of, or witness a crime (to the exclusion of any violation, enumerated or not).

This caused a significant conflict and unfairness which needed to be addressed. A child victim who simply witnessed the enumerated violation committed against somebody else, e.g., his or her parent, would not be eligible under the previous law - even when his or her parent would be eligible for assistance from the Office. Though this is a very specific set of circumstances which will likely result in few claims, this necessary change will resolve that conflict and be greatly beneficial to those who would need the reimbursement.

Victims of Unlawful Surveillance Crimes (Chapter 179 of the Laws of 2019) This new law expands eligibility to crime victims who did not suffer a physical injury but were victims of the crimes of Unlawful Surveillance 2nd and 1st, and Dissemination of an Unlawful Surveillance Image 2nd and 1st.

Under OVS' enacting statute, to be eligible for reimbursement for certain crime-related expenses, one must be a physically injured victim of a crime unless excepted by other provision(s) of the enacting statute. Subdivisions 11 and 12 of section 631 are two such provisions which exempts the physical injury requirement, providing certain, enumerated benefits to the victims of certain, enumerated crimes.

Subdivision 11 exempts the physical injury requirement and makes victims eligible for an award that includes loss of earnings, unreimbursed costs of mental health counseling, and transportation expenses incurred for necessary court appearances in connection with the prosecution of such crime. This change will include victims of unlawful surveillance in the first and second degree, as a fitting and natural extension of these provisions.

Subdivision 12 exempts the physical injury requirement and makes victims eligible for loss of earnings, unreimbursed costs of repair or replacement of essential personal property, unreimbursed costs for security devices, costs of residing at or utilizing services provided by shelters for battered spouses and children, transportation expenses incurred for necessary court appearances in connection with the prosecution of such crime, unreimbursed costs of mental health counseling, costs of crime scene cleanup and securing a crime scene, reasonable relocation expenses, and for occupational or job training. This change will include victims of the dissemination of an unlawful surveillance image in the first and second degree, again as a fitting and natural extension of these provisions.

A handwritten signature in black ink, appearing to read "Elizabeth Cronin". The signature is fluid and cursive, with a large initial "E" and "C".

Elizabeth Cronin, Esq.
Director

CHAPTER 178

AN ACT to amend the executive law, in relation to the definition of "child victims" and to awards for certain child victims

Became a law August 21, 2019, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 11 of section 621 of the executive law, as amended by chapter 56 of the laws of 1988, is amended to read as follows:

11. For purposes of this article "child victim" shall mean a person less than eighteen years of age who suffers physical, mental or emotional injury, or loss or damage, as a direct result of a crime **or any violation listed in subdivision twelve of section six hundred thirty-one of this article,** or as a result of witnessing a crime **or any violation listed in subdivision twelve of section six hundred thirty-one of this article.**

§ 2. Subdivision 17 of section 631 of the executive law, as added by chapter 272 of the laws of 2009, is amended to read as follows:

17. Notwithstanding the provisions of subdivision one of this section, where a child victim has not been physically injured as a direct result of a crime **or any violation listed in subdivision twelve of this section,** or has witnessed a crime **or any violation listed in subdivision twelve of this section** in which no physical injury occurred, the claimant shall only be eligible for an award that includes the unreimbursed cost of repair or replacement of essential personal property of the child victim that has been lost, damaged or destroyed as a direct result of a crime **or any violation listed in subdivision twelve of this section,** transportation expenses incurred by the claimant for necessary court appearances of the child victim in connection with the prosecution of such crimes, and, if counseling is commenced within one year from the date of the incident or its discovery, (1) the unreimbursed cost of counseling provided to the child victim on account of mental or emotional stress resulting from the incident in which the crime **or any violation listed in subdivision twelve of this section** occurred, and/or (2) the unreimbursed cost of counseling provided to the claimant eligible under paragraph (h) of subdivision one of section six hundred twenty-four of this article and resulting from the incident in which the crime **or any violation listed in subdivision twelve of this section** occurred.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.

EXPLANATION--Matter in **italics** is new; matter in brackets [-] is old law to be omitted.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS

Temporary President of the Senate

CARL E. HEASTIE

Speaker of the Assembly

CHAPTER 179

AN ACT to amend the executive law, in relation to victim compensation for unlawful surveillance crimes

Became a law August 21, 2019, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 11 of section 631 of the executive law, as amended by section 1 of part G of chapter 55 of the laws of 2017, is amended to read as follows:

11. Notwithstanding the provisions of subdivisions one, two and three of this section, an individual who was a victim of either the crime of: menacing in the second degree as defined in subdivision one of section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; unlawful imprisonment in the first degree as defined in section 135.10 of the penal law; kidnapping in the second degree as defined in section 135.20 of the penal law; kidnapping in the first degree as defined in section 135.25 of the penal law; criminal mischief in the fourth degree as defined in subdivision four of section 145.00 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; robbery in the second degree as defined in subdivision one, paragraph [b] **(b)** of subdivision two or subdivision three of section 160.10 of the penal law; ~~[or]~~ robbery in the first degree as defined in subdivisions two, three and four of section 160.15 of the penal law; **unlawful surveillance in the second degree as defined in section 250.45 of the penal law; or unlawful surveillance in the first degree as defined in section 250.50 of the penal law** who has not been physically injured as a direct result of such crime shall only be eligible for an award that includes loss of earnings and the unreimbursed costs of counseling provided to such victim on account of mental or emotional stress resulting from the incident in which the crime occurred.

§ 2. Subdivision 12 of section 631 of the executive law, as amended by chapter 204 of the laws of 2018, is amended to read as follows:

12. Notwithstanding the provisions of subdivisions one, two and three of this section, an individual who was a victim of either the crime of menacing in the second degree as defined in subdivision two or three of section 120.14 of the penal law, menacing in the first degree as defined in section 120.13 of the penal law, criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law, harassment in the second degree as defined in section 240.26 of the penal law, harassment in the first degree as defined in section 240.25 of the penal law, aggravated harassment in the second degree as defined in subdivision three or five of section 240.30 of the penal law, aggravated harassment in the first degree as defined in subdivision two of section 240.31 of the penal law, criminal contempt in the first degree as defined in subdivision (b) or subdivision (c) of section 215.51 of the

EXPLANATION--Matter in **italics** is new; matter in brackets [-] is old law to be omitted.

penal law, or stalking in the fourth, third, second or first degree as defined in sections 120.45, 120.50, 120.55 and 120.60 of the penal law, respectively, or dissemination of an unlawful surveillance image in the second or first degree as defined in sections 250.55 and 250.60, respectively, or a hate crime as defined in section 485.05 of the penal law who has not been physically injured as a direct result of such crime shall only be eligible for an award that includes loss of earning or support, the unreimbursed cost of repair or replacement of essential personal property that has been lost, damaged or destroyed as a direct result of such crime, the unreimbursed cost for security devices to enhance the personal protection of such victim, the cost of residing at or utilizing services provided by shelters for battered spouses and children as provided in subdivision one of section six hundred twenty-six of this article, transportation expenses incurred for necessary court appearances in connection with the prosecution of such crime, the unreimbursed costs of counseling provided to such victim on account of mental or emotional stress resulting from the incident in which the crime occurred, the unreimbursed cost of crime scene cleanup and securing a crime scene, reasonable relocation expenses, and for occupational or job training. For purposes of this subdivision, "necessary court appearances" shall include, but not be limited to, any part of trial from arraignment through sentencing, pre and post trial hearings and grand jury hearings.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS

Temporary President of the Senate

CARL E. HEASTIE

Speaker of the Assembly