

# ***ADVISORY BULLETIN***

**TRANSMITTAL NO. 2022-11**

**TO: ALL FUNDED PROGRAMS  
ADVISORY COUNCIL MEMBERS**

**FROM: ELIZABETH CRONIN, ESQ.  
DIRECTOR**

**SUBJECT: EXECUTIVE LAW UPDATE**

**DATE: December 15, 2022**

There were three important changes made to the law during the 2022-2023 Legislative Session, which OVS advocated for to benefit victims of crime. Two of these changes were to our enacting statute and expand eligibility and expenses for certain, uninjured victims of crime. The third relates to protections for victims of identity theft during debt collection procedures. All the changes take effect on December 27, 2022.

**PLEASE NOTE: *The changes to OVS' law do not apply to claims filed before December 27, 2022. Claims filed before that date cannot be reopened and these new provisions do not apply to these claims. All the new laws are attached to the end of this notice.***

**Eligibility for Victims of Revenge Porn** (Chapter 239 of the Laws of 2022). This new law expands eligibility to victims of crime who did not suffer a physical injury but were victims of the crime of unlawful dissemination or publication of an intimate image as defined in section 245.15 of the Penal Law. Current law generally requires a physical injury for a victim to be eligible for reimbursement of crime-related expenses from OVS. There are, however, provisions which remove the physical injury requirement for victims of certain enumerated crimes. Subdivisions 11 and 12 of section 631 of the Executive Law list such crimes and the allowed expenses. Subdivision 12 will now include victims of this of unlawful dissemination or publication of an intimate image charge.

These victims will now be 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 abused 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.

**Eligibility for Victims of Reckless Endangerment Crimes** (Chapter 343 of the Laws of 2022). This new law expands eligibility to victims of crime who did not suffer a physical injury but were victims of the crimes of reckless endangerment in the second and first degree as defined in section 120.20 and 120.25. Current law generally requires a physical injury for a victim to be eligible for reimbursement

of crime-related expenses from OVS. As mentioned above, however, subdivision 11 removes the physical injury requirement; these reckless endangerment charges will now be included in subdivision 11.

These victims will now be eligible for loss of earnings, the unreimbursed costs of mental health counseling, as well as the costs of crime scene cleanup and securing a crime scene.

**Expanded Protections of Victims of Identity Theft** (Chapter 238 of the Laws of 2022). This new law is meant to afford additional protections to victims of identity theft by requiring creditors to cease collection activities until completion of their review of certain information, giving the victim the option to have reported such acts to law enforcement or through a filing made by the victim to the Federal Trade Commission (FTC) ID Theft Victim's reporting process, providing a written statement that the debtor was coerced, or criminal or family courts that support the statement of identity theft.

Identity theft is a common occurrence that can wreak havoc with a person's life. Identity theft can be perpetrated by strangers but also occurs as a result of a domestic violence or elder abuse, where the perpetrator is known to the victim. Under circumstances where the victim is familiar with the perpetrator, the victim may not be able to or may not wish to pursue criminal charges. This might be the victim's choice, or their only choice if their safety is at risk, but either way, they should have protections afforded to them under state law.

The current law compels a victim of identity theft to report such crime to law enforcement, whether they wish to or not or whether it is safe for them to do so or not, for collection activities against them to be suspended as further investigation is made into the legitimacy of the debt.

Affording victims of identity theft an alternate way to report such victimization for debtors to pause collection efforts while other factors are considered is the right thing to do. Such added language does very little to impede a legitimate debtor's rights, but it can do much to protect those who may not be safe turning to law enforcement to report such activity.

For any questions regarding these changes to OVS's law, please reach out to Katie Egglefield or Tana Orologio at 1-800-247-8035.

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Elizabeth Cronin, Esq.  
Director

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

Became a law June 30, 2022, 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 12 of section 631 of the executive law, as amended by chapter 179 of the laws of 2019, 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 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 **unlawful dissemination or publication of an intimate image as defined in section 245.15 of the penal law**, or dissemination of an unlawful surveillance image in the second or first degree as defined in sections 250.55 and 250.60 **of the penal law**, 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.

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

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

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

LAWS OF NEW YORK, 2022

CHAPTER 343

AN ACT to amend the executive law, in relation to awards to victims of certain crimes

Became a law June 30, 2022, 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 chapter 179 of the laws of 2019, 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; reckless endangerment in the second degree as defined in section 120.20 of the penal law; reckless endangerment in the first degree as defined in section 120.25 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) of subdivision two or subdivision three of section 160.10 of the penal law; 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, the unreimbursed cost of crime scene cleanup and securing a crime scene, 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. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all claims filed on or after such date.

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

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

LAWS OF NEW YORK, 2022

CHAPTER 238

AN ACT to amend the general business law, in relation to debt collection procedures related to identity theft

Became a law June 30, 2022, 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. Subdivisions 1 and 2 of section 604-a of the general business law, as added by chapter 456 of the laws of 2008, are amended to read as follows:

1. Upon receipt from a debtor of the following, a principal creditor shall cease collection activities until completion of the review provided in subdivision five of this section:

(a) a copy of a valid police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, including, but not limited to, a violation of section 190.78, 190.79, 190.80, 190.81, 190.82 or 190.83 of the penal law, for the specific debt being collected by the principal creditor; ~~and~~ or

(b) a copy of a completed and signed federal trade commission identity theft victim's report filed by the debtor alleging that the debtor is the victim of identity theft; and

(c) the debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the principal creditor.

2. The written statement described in paragraph ~~(b)~~ (c) of subdivision one of this section shall consist of either of the following:

(a) a signed federal trade commission ID theft victim's affidavit; or

(b) a written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting such certification who declares as true any material matter pursuant to this subdivision that he or she knows to be false is guilty of a misdemeanor. Such statement shall contain or be accompanied by, the following, to the extent that such items are relevant to the debtor's allegation of identity theft with respect to the debt in question:

(i) a statement that the debtor is a victim of identity theft;

(ii) a copy of the debtor's driver's license or identification card, as issued by the state;

(iii) any other identification document that supports the statement of identity theft;

(iv) specific facts supporting the claim of identity theft, if available;

(v) any explanation showing that the debtor did not incur the debt.

(vi) any available correspondence disputing the debt after transaction information has been provided to the debtor;

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

(vii) documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as

utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred;

(viii) a telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement;

(ix) to the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible; ~~[or]~~

(x) an express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt;

(xi) an express statement that the debtor was coerced to authorize the use of the debtor's name or personal information for incurring the debt;  
or

(xii) criminal or family court documents that support the statement of identity theft.

§ 2. This act shall take effect one hundred eighty days 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

1 Section 1. Subdivision 9 of section 631 of the executive law, as  
2 amended by chapter 487 of the laws of 2014, is amended to read as  
3 follows:

4 9. Any award made for the cost of repair or replacement of essential  
5 personal property, including cash losses of essential personal property,  
6 shall be limited to an amount of [~~five~~] twenty-five hundred dollars,  
7 except that all cash losses of essential personal property shall be  
8 limited to the amount of one hundred dollars. In the case of medically  
9 necessary life-sustaining equipment which was lost or damaged as the  
10 direct result of a crime, the award shall be limited to the amount of  
11 ten thousand dollars.

12 § 2. Subdivision 3 of section 623 of the executive law, as amended by  
13 section 8 of part A1 of chapter 56 of the laws of 2010, is amended to  
14 read as follows:

15 3. To adopt, promulgate, amend and rescind suitable rules and  
16 regulations to carry out the provisions and purposes of this article,  
17 including rules for the determination of claims, rules for the approval  
18 of attorneys' fees for representation before the office and/or before  
19 the appellate division upon judicial review as provided for in section  
20 six hundred twenty-nine of this article, rules for the definition and  
21 reasonable reimbursement of individual items of essential personal prop-  
22 erty considered essential and necessary for the victim's welfare pursu-  
23 ant to section six hundred thirty-one of this article, and rules for the  
24 authorization of qualified persons to assist claimants in the  
preparation of claims for presentation to the office.

26 § 3. This act shall take effect on the one hundred eightieth day after  
27 it shall have become a law and apply to all claims filed on or after  
28 such effective date.

## Regulations

TITLE 9  
EXECUTIVE DEPARTMENT  
SUBTITLE M  
OFFICE OF VICTIM SERVICES  
PART 525  
PRACTICE AND PROCEDURE BEFORE THE OFFICE OF VICTIM SERVICES  
9 NYCRR §§525.3, 525.12

Section 525.3 is amended, adding new subdivisions (i) and (j) to read as follows:

(i) Welfare as used in subdivision (n) of section 525.12 of this Part, shall mean items related to a victim's clothing, bedding, ability to communicate, and safe operation of their personal means of transportation.

(j) Receipted as used in subdivision (n) of section 525.12 of this Part, shall mean the original or replacement receipt indicating the purchase price of an item or items of essential personal property.

Section 525.12 is amended, adding new subdivision (n) to read as follows:

(n) Pursuant to and in accordance with this Part and Executive Law article 22 and subject to any applicable maximum award limitations contained therein, any award for essential personal property related to the victim's welfare shall be subject to the following limitations:

(1) All awards related to clothing shall be limited as follows: (i) Items of outerwear, suits and footwear shall be the receipted amount, in an amount not exceeding five-hundred dollars per item. (ii) All other items of clothing shall be the receipted amount, in an amount not exceeding one-hundred dollars per item.

(2) All awards related to bedding shall be limited as follows: (i) Mattress and platform or box spring shall be the receipted amount, in an amount not exceeding two-thousand dollars. (ii) All other items of bedding shall be the receipted amount, in a cumulative amount not exceeding five-hundred dollars.

(3) All awards made pursuant to Executive Law article 22 and this Part related to a victim's ability to communicate shall be limited to the receipted amount, in an amount not exceeding one-thousand five-hundred dollars per item.

(4) All awards made pursuant to Executive Law article 22 and this Part related to a victim's safe operation of their personal means of transportation shall be limited to the receipted amount, in an amount not exceeding two-thousand five-hundred dollars per item.

(5) Notwithstanding the provisions of paragraphs (1), (2) or (3) of this subdivision, if the information developed in the course of the investigation discloses that the victim's domicile was damaged or destroyed as a result of the crime of arson as defined by article 150 of the Penal Law and the claim is based upon such crime, or that the victim had to flee their domicile due to the crime upon which the claim is based, and the Office has not made or cannot make an award for relocation expenses pursuant to Executive Law article 22, the Office may make an award for related clothing, bedding and/or ability to communicate, unreceipted, in an amount up to the applicable maximum award limitations contained in Executive Law article 22.

(6) Notwithstanding the provisions of paragraphs (1), (2), (3) or (4) of this subdivision, if the information developed in the course of the investigation discloses that the claim for essential personal property is related to the victim's health or safety, such award shall be limited to the receipted amount, subject to the applicable maximum award limitations contained in Executive Law article 22.