

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed
Adoption of Amendments to the
Rules of the Minnesota
Crime Victims Reparations Board
Governing Claims Procedures and
Eligibility for Reparations

STATEMENT OF NEED
AND REASONABLENESS

I. General

The Minnesota Crime Victims Reparations Board provides compensation to victims of crime who have suffered physical or emotional injury. Claimants may receive compensation for expenses incurred for medical or dental care, psychological counseling, loss of income, childcare or household services, or in case of a death, funeral expenses or loss of support for a victim's dependents. Claimants must meet the Board's eligibility requirements which include filing a claim within one year, reporting the crime to the police, and cooperating fully with law enforcement. The Board is composed of five members who meet once a month to review claims and to approve or deny awards.

The Board is governed by a set of statutes and rules which specify the Board's eligibility criteria. The proposed amendments will supplement the existing rules. The amendments are needed to clarify the procedures followed by the Board in determining eligibility for reparations and in calculating awards. The majority of the proposed amendments are based on the experiences of the Board in implementing Minnesota Statutes, sections 611A.51 - .67 and are consistent with those statutes. The proposed amendment regarding payment benefitting an offender is required to comply with changes in the federal Victims of Crime Act, 42 United States Code, section 10602(b)(7), governing the administration of the Crime Victims Reparations Board. All of the proposed amendments are designed to represent the public interest by ensuring evenhanded treatment of claims despite circumstances which might otherwise lead to undue scrutiny or application of bias.

II. Statutory Authority

The Board is required by Minnesota Statutes, section 611A.56, subdivision 1, paragraph (b), to:

adopt rules to implement and administer sections 611A.51 to 611A.68 including rules governing the method of practice and procedure before the board, prescribing the manner in which applications for

reparations shall be made, and providing for discovery proceedings.

The Board first adopted rules in the mid-1970's in response to this statutory mandate and has, at times, amended the rules or added new rules. The statute clearly authorizes the Board to adopt new rules relating to claim procedures, the calculation of awards and clarification of eligibility criteria.

III. Small Business Considerations

Minnesota Statutes, section 14.115, requires agencies, when proposing a new rule or amending existing rules, to consider certain methods for reducing the impact of the rule on small businesses.

The proposed amendments to the Crime Victims Reparations Board Rules will have only an extremely minimal indirect impact, if any, on small businesses. The rules do not affect small businesses disproportionately. The Board considered the impact of the amendments on small business and determined that no feasible alternative to the rules exists.

IV. Fees Imposed by the Rule

Minnesota Statutes, section 16A.123, subdivision 1, does not apply because the proposed amendments do not set any fees.

V. Fiscal Impact

A fiscal note is not required pursuant to Minnesota Statutes, section 3.982, because the proposed amendments will not force any local agency or school district to incur costs.

VI. Other Statutory Requirements

Minnesota Statutes, section 14.11, subdivision 2, regarding agricultural effect, is inapplicable because the proposed amendments will not have any direct and substantial adverse impact on agricultural land.

Minnesota Statutes, sections 115.43, subdivision 1, and 116.07, subdivision 6, regarding pollution control and Minnesota Statutes, section 144A.29, subdivision 4, regarding nursing homes are not applicable.

VII. Rule-By-Rule Analysis

7505.0750 DEFINITIONS

Subpart 1a. Adult. Part 7505.3400 regarding secondary victims in homicide cases provides for limited coverage for adult children of a homicide victim. A definition of "adult" is needed to clarify which claimants will be eligible for benefits. The proposed definition of adult is a person who is 21 years old or older. This definition is based on the Board's experience with claimants who are less than 21. The Board has found that claimants who are less than 21 may still be living at home or may still be partially dependent on their parents. Also, these young individuals often have no insurance coverage and are, therefore, in greater need of some coverage under the proposed secondary victims rule.

Subpart 5. Witness. Part 7505.3400 regarding secondary victims also extends coverage to persons who witnessed a violent crime. A definition of witness is needed to determine who will be eligible for benefits under Part 7505.3400. A witness is defined in the proposed rules as a person who was present and saw or heard the crime. This is reasonable because it will include only those who actually perceived the crime and would be most likely to have an emotional impact as a result of their perceptions. It excludes those who were at the scene but did not actually see anything, or those who arrived at the scene later.

Subpart 6. Net Income. Parts 7505.3100 and 7505.3200 regarding loss of income use the term "net income". A definition of "net income" is needed to determine what amount of lost income will be paid. The proposed definition of net income is gross income minus taxes and deductions. This is consistent with past Board practice and reflects the purpose of the reparations program which is to reimburse claimants only for out-of-pocket losses. The rule ensures that the lost income to be replaced equals the amount which actually would have been paid to the victim, and does not include money which would have been paid in taxes or deducted for benefits or union dues.

Subpart 7. Family or Household Members Part 7505.3600 regarding household services prohibits payment to family or household members who provide assistance to the victim. A definition of "family and household members" is needed to specify which providers of household services are not eligible for reimbursement. The proposed definition of "family and household members" includes spouses, former spouses, parents, children, grandparents, siblings, persons who are living in the household, and persons who have a child in common. It is reasonable to exclude these persons from coverage because of the difficulty of verifying services provided by close relatives and persons living with the victim.

505.0750 BOARD DETERMINATION OF FULL COOPERATION.

Subpart 1. Board finding of full cooperation.

The Board's statutes require that claimants cooperate fully with law enforcement, however, there is currently no explanation in the statutes or rules of the meaning of "full cooperation". Many claimants have appealed the denial of claims on this issue and one administrative law judge suggested that further guidance is needed in the Board's rules regarding the elements of full cooperation. This subpart is necessary to provide a clear definition of the conduct and time frame which the Board will consider in determining whether a claimant fully cooperated.

The proposed rule requires claimants to comply with any specific and direct requests communicated to them by law enforcement officials. For example, if the investigating officer requires the claimant to come into the station and view mug shots, the claimant must make a reasonable effort to comply. The rule also specifies that a claimant must cooperate throughout the investigation and prosecution of the case. Under this rule, it would not be "full cooperation" if the claimant cooperated with the investigation, but then to refused to testify at the trial.

This proposed rule is reasonable because it only requires that the claimant's actions be responsive to specific and direct requests that were communicated to them. It allows for the possibility that law enforcement officials did not make a reasonable effort to contact the victim or that the request for action by the victim was not clearly explained. Paragraph B is reasonable because cooperation is essential during the specified time period in order to prosecute criminal cases. The rule does not require cooperation beyond prosecution of the case.

Subpart 2. Ability to cooperate

The Board has considered many claims where victims were unable to cooperate due to their emotional or physical condition resulting from their injuries, or due to a pre-existing physical or mental disability. This subpart is necessary to ensure that victims or claimants who are disabled, incompetent, or otherwise unable to cooperate due to their physical or mental condition, are not excluded from eligibility for reparations. This subpart requires the Board to find that the victim was actually physically and mentally able to cooperate with the police before it can consider whether the victim should be denied benefits because of a lack of cooperation. It also sets out the factors the Board may consider in determining an individual's ability to cooperate with law enforcement agencies. It is reasonable because it would be unfair to deny reparations to victims or claimants who, through no fault of their own, are unable to cooperate.

.505.3100 LOSS OF SUPPORT

Subpart 1. Determination of amount.

The Board's statutes provide for compensation for "loss of support" to a deceased victim's dependents. The statutes and rules, however, do not currently specify how the Board should determine the amount to be paid. The Board's policy has been to calculate loss of support using a formula which takes into account the net income of the deceased prior to death, the number of family members, and collateral sources, such as social security benefits. It is necessary to put this formula into rule form to establish a consistent method for calculating loss of support. The proposed rule states that loss of support equals the victim's monthly net income divided by the number of surviving family members minus payments received from collateral sources. This subpart is reasonable because it bases loss of support on an amount of income that is readily verifiable and divides that amount equally among the family members who depended on the victim for support.

In recent years, the number of claims involving loss of support has increased, while funding for the reparations program has remained at the same level. A rule is needed to provide an even distribution of the resources available. This subpart meets the need for fiscal restraint by establishing a cap on the monthly amount of loss of support. The maximum monthly amount which the Board is allowed to pay to each dependent equals the monthly rate each dependent is eligible to receive from the Social Security Administration. For example, if the victim's monthly net income per family member was equal to \$2000 and each surviving family member receives \$500 a month from social security, the Board may not pay more than \$500 to each family member. It is reasonable to base the maximum payment on social security benefits because those benefits reflect the income of the deceased during his or her lifetime and the number of dependents. The social security benefits are also adjusted each year for inflation, so the Board's cap will also be increased each year automatically.

Subpart 2. Employed Spouse

The loss of support statute was intended to provide compensation for dependents of a deceased victim. Subpart 2 is necessary to address the situation where the surviving spouse contributed substantially to the family's income and was not completely dependent on the victim for support. The rule provides that the spouse's portion of loss of support should be reduced if the spouse was employed at the time of the crime. The amount of the reduction is based on how much the spouse contributed to the total family income. For example, if the spouse had an income of \$15,000 and the victim's income was \$30,000, the spouse's loss of support would be reduced by \$15,000 divided by \$45,000 or 33%. This rule is reasonable because a spouse who was also employed at the time of the crime does not need as much compensation as one who was not working.

ubpart 3. Net income.

There are various ways in which a victim may have been supporting his or her dependents. A rule was needed for determining what types of income should be considered in various situations when determining loss of support. This subpart specifies what will be included as income where the victim was : 1) employed, or 2) receiving government benefits, or 3) paying child support or alimony. It is reasonable because it prevents the exclusion of claimants simply because the victim and spouse were divorced, or because the victim was on welfare. It allows the consideration of various types of income that the victim may have had, and includes those who were unemployed, but who still supported the family through government benefits, or those who were divorced, but were supporting the family through child support or alimony payments.

7505.3200 LOSS OF INCOME

Subpart 1. Computation of lost income: employed victim

The Board's statutes provide for payment to a victim for lost income due to a crime, but do not specify how lost income should be calculated. It is therefore necessary to specify how lost income will be calculated. The Board's policy has been to obtain a form from the victim's employer stating the victim's net income prior to crime, the amount of time missed from work due to the crime, as well as information about sick leave and disability benefits. This rule provides that lost income will be based on information provided by the victim's employer verifying the victim's actual net wage at the time of the crime and the amount of time lost. The rule also provides that other sources of information may be used to calculate lost income if information from the employer is unavailable.

This procedure is reasonable because it results in a good estimation of the victim's out-of-pocket loss. It eliminates the need for speculation about the victim's income and the time missed from work. It relies instead on the employer, who is an objective source of information about the victim's employment, including net wage, number of days missed, and benefits. The rule is also reasonable because it creates an exception in cases where the employer refuses to submit or cannot submit information to the Board.

Subpart 2. Computation of lost income: unemployed or self-employed victim

On some occasions, the Board has had to determine lost income where there is no employer who can verify the victim's wages. This situation arises where the victim is unemployed at the time of the crime or where the victim is self-employed. Administrative law judges held in two cases that the Board should pay some amount of lost wages, even though the victim was unemployed, if the victim had a history of employment. A rule was needed to specify how the amount of lost wages should be

determined if the victim was unemployed. It was also necessary to address the problem of fraudulent or inflated claims for lost wages, for example, where a claimant states they earned \$30,000 a year, but did not file a tax return and has no other documents to prove the earnings.

This subpart provides a framework for compensation of individuals with an employment history and expectation of employment, but who may have experienced a period of unemployment just prior to the incident for which the claim was filed. The rule provides that loss of income must be calculated at a rate based upon the victim's average net income in the 12 months before the crime. It also lists the types of documents, such as tax returns and signed contracts, that can be used to verify income for a victim who is unemployed or self-employed. This subpart also provides that claimants who do not file tax returns cannot claim they had income exceeding the amount for which tax filing is not required. For example, if the Department of Revenue requires persons with an income greater than \$4000 to file a tax return, the victim cannot claim they earned more than that amount if they did not file a tax return.

The rule is reasonable because it allows claims for lost wages where the claimants are self-employed or were temporarily unemployed at the time of the crime. However, it still ensures that lost income paid by the Board will be consistent with the victim's actual average income as verified by recent work history and measureable earnings rather than speculative wage loss. The last paragraph of this subpart, limiting wage replacement if the claimant did not file tax returns, is reasonable because claimants should not be allowed to claim more income for purposes of filing a reparations claim than they claim with the Department of Revenue. This rule will also prevent payment of inflated claims for lost income.

Subpart 3. Proof of Inability to Work.

The Board's practice has been to obtain documentation from a psychologist or doctor verifying that a claimant is unable to work due to the crime and giving an estimated return-to-work date. A rule is needed to ensure that the Board continues to base its determination of the victim's disability on a professional assessment. Subpart 3 places the burden of providing such an assessment on the claimant. The rule is reasonable because the claimant has access to his or her medical records, whereas the Board does not have access to this privileged information. Further, this requirement puts very little burden on the claimant.

7505.3300 PAYMENT BENEFITTING OFFENDER

Subpart 1. Domestic Abuse -- clarification

The Board's statutes prohibit making any payment that would unjustly enrich the offender. A discussion of whether a payment to the victim would benefit the offender most often arises in cases of domestic abuse where the victim continues to share a residence with the offender. Under a new provision of the federal Victims of Crime Act, 42 United States Code, section 10602(b)(7), programs must treat domestic abuse cases in the same manner as all other cases and may not deny compensation to any victim because of a familial relationship or sharing of residency with the offender, except pursuant to rules to prevent unjust enrichment. The new federal Program Guidelines for Victim Compensation Programs, Federal Register, Vol. 55, No. 20, p. 3184, suggest that payments to victims of domestic violence which benefit offenders in only a minimal or inconsequential manner should not be considered unjust enrichment. The Board needed rules to show that it was complying with this federal requirement so that it can continue to receive federal funding.

The proposed rule states that the Board will treat claims for domestic abuse in the same manner as other claims and that no claim will be denied simply because the victim is still residing with the offender. It also specifies that the Board may not deny payments to hospitals, doctors, etc. for the claimant's medical expenses. The rule is reasonable because it clarifies the Board's intention to handle all claims in a uniform manner, and ensures that third party vendors, ie. medical providers, will be treated uniformly across all crime classes.

Subpart 2. Claim Denial

This subpart is necessary to ensure that victims of domestic violence are not penalized simply because they are victims of a type of crime which may be reoccurring. The subpart states that a claim may not be denied simply because the claimant has previously filed other claims for incidents involving the same offender. This rule recognizes the dynamics of domestic abuse, which may involve chronic and progressive acts of violence, and that claimants, through no fault of their own, may have been victimized on more than one occasion by the same offender.

7507.3400 SECONDARY VICTIMS

Relatives of homicide victims suffer psychological harm due to a crime and often incur expenses as a result of their emotional injury. The Board wanted to extend some coverage under the reparations program to this group of secondary victims. However, under the Board's current statutes and rules, it is unclear whether secondary victims are covered. Also, the Board's funding is limited and could not support full payment of expenses for all secondary victims. This subpart is necessary to indicate which secondary victims are eligible for benefits and to specify the limits of coverage.

The rule extends full coverage to parents, spouses and minor children of a homicide victim. Minor children would include those who are less than 21 years old. It extends partial coverage--ten counseling sessions only--to all siblings, regardless of their age, and to adult children of homicide victims. Adult children would include those who are 21 years old or older. The rule is reasonable because it allows these individuals, who have suffered a substantial emotional injury, to be treated in the same manner as other injured victims. It is consistent with Minnesota Statutes, 611A.01 (b) which defines "victim" to include the surviving spouse or next of kin of homicide victims for the purpose of asserting rights under the rest of Minnesota Statutes, Chapter 611A - Minnesota's Bill of Rights for Victims. The rule is also reasonable because it requires the same standard of injury for secondary victims as for other victims of crime.

The difference between full and partial coverage in the proposed rule depends on the relationship of the claimant to the victim. This is reasonable because parents, spouses and minor children have a greater need for full benefits due to the close relationship with the victim. The Board's mental health consultant, Jeanne Herzog, reported that minor children, in particular, can suffer greater psychological trauma than adult children because they are still developing emotionally. Also, according to Linda Ledray, a psychologist specializing in post traumatic stress disorder, and Dr. Jim Janeczek, a psychiatrist and Board member, ten counseling sessions is the standard number of sessions usually required by persons who have experienced a death in their family. It is also common practice for insurance carriers to limit coverage to ten sessions. It is reasonable for the Board to similarly limit coverage for secondary victims so that there will still be enough funding available for primary victims of crime.

The Board also identified a need for some coverage of witnesses of violent crime and persons who discover a body at the scene of a homicide. These individuals may suffer an emotional injury and may have expenses related to the injury. A rule was necessary to identify witnesses who would most likely suffer emotional injuries and to provide compensation. This rule extends coverage to witnesses who actually see a violent crime and to persons who discover a body.

The proposed rule extends full coverage to witnesses to a violent crime. It extends partial coverage--ten counseling sessions only--to persons who discover a body. This rule reflects Board practice which has been to cover witnesses to a violent crime in full, but not to provide full coverage to persons who discover a body. It is reasonable to limit coverage in cases involving the discovery of a body because that experience, while it can have a psychological impact, is less traumatic than actually seeing the crime take place. This part of the rule also meets the need for fiscal restraint.

7507.3500 PARENTS OF CHILD VICTIMS -- DOMESTIC CHILD ABUSE OR SEXUAL ASSAULT

The Board has received claims from parents of victims of sexual abuse seeking payment for counseling sessions which the parents attended. The counseling sessions were designed to help parents understand the dynamics of sexual abuse so that they can help the child to recover. The Board's statutes and rules are currently ambiguous about whether or not this is covered since the parents were not victims of a crime. There has been one appeal of the Board's denial of a claim submitted by a parent of a sexual abuse victim, and the administrative law judge awarded the claimant payment for a limited number of counseling sessions because it would benefit the child who was a victim of sexual abuse. A rule is necessary to clarify whether this type of expense will be covered and, if so, to what extent?

The proposed rule extends limited coverage--up to five counseling sessions--to parents of sexual abuse victims where the counseling sessions are for the direct benefit of the child. It is reasonable because it provides compensation for treatment of parents, which, according to experts in the field of child psychology, is an integral part of the child's treatment and essential to the victim's recovery in cases of sexual abuse. A limit of five sessions was selected because mental health professionals, Dr. Susanne Phipps-Yonas and Leslie Faricy, advised the Board that this would be an adequate number of sessions to accomplish the goals of treatment for parents of child victims.

7507.3600 HOUSEHOLD SERVICES

The Board's statutes allow payment for reasonable household services to replace those the victim would have performed if he or she had not been injured. Many claimants ask the Board to compensate family members who help them during their recovery from an injury. The Board's practice has been to deny these requests because it is too difficult to verify and monitor the quantity of services provided by relatives or persons living in the household. The Board is concerned about the potential for fraud in this area because relatives or friends of the claimant may submit inflated expenses. Also, the victim may not actually have incurred an expense for this type of service, if the relative or household member provided the services free-of-charge. The Board's current rules allow consideration of the relationship between the claimant and the service provider when determining reasonableness of services. However, there is currently no rule which specifically addresses the issue of household services performed by relatives or household members.

The proposed rule clarifies that services provided by relatives or household members are not compensable. The rule prohibiting payment to relatives or household members is reasonable because it still allows payment for household services provided by either a professional service or someone who is not a relative or household member. Services provided by professional homecare services can be verified because they keep track of the hours worked, services performed and charges incurred. Also, there are standard rates which are acceptable for this type of service. Insurance carriers have similar policies preventing reimbursement for services rendered by family or household members.

CONCLUSION

Based on the foregoing, the Minnesota Crime Victims Reparations Board's proposed amendments are both necessary and reasonable.

Dated: August 5, 1991

Nancy Johnson

Chair, Minnesota Crime Victims
Reparations Board