

STATE OF MINNESOTA  
DEPARTMENT OF PUBLIC SAFETY

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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  
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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. Victims and their immediate family members may receive compensation for medical or dental care, psychological counseling, loss of income, child care or household services, funeral expenses or loss of support for a victim's spouse and children. Claimants must meet the Board's eligibility requirements which include filing a claim within two years, 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 Board needs the proposed amendments to clarify eligibility for loss of support and lost wages, and to control costs and allow the Board to stay within its budget. 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.

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 most recent amendments to the Board's rules became effective April 5, 1993. The statute clearly authorizes the Board to adopt new rules setting rate limits on expenses and clarifying the Board's procedure for calculating claims.

### 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 Board has considered these methods for reducing the impact of the rules on small businesses.

The proposed amendments will have no impact on small businesses.

### IV. Departmental Earnings

Minnesota Statutes, section 16A.1285, does not apply because the proposed amendments do not set fees.

### V. Fiscal Impact

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of the rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

### VI. Impact on Agricultural Lands

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.

### VII. Rule-By-Rule Analysis

#### 7505.3100 LOSS OF SUPPORT

Subp. 5. Three Year Review. The Board's statute states that claims for loss of support may be resubmitted after 3 years and directs the Board to consider the claimant's financial need and the availability of funds to the Board. The rules passed in 1993 provided that, for purposes of the three year review, if the claimant's gross annual income is more than 185% of the federal poverty level, the claimant is not considered to have a

continuing financial need. However, further amendments are needed to clarify which year of gross income will be used to make the eligibility determination. Also, the rule does not indicate whether benefits can be resumed if a claimant's income decreases in the future. The proposed rule states that the income reported on the claimant's tax return for the year prior to the 3 year review date will be used to determine eligibility. The rule also states that after benefits have ceased, they cannot be resumed.

The proposed rule is reasonable because it provides a consistent and objective means of determining continued eligibility for loss of support, and prevents arbitrary and subjective decisions about the claimant's eligibility for further benefits. By reducing the Board's costs, this rule will also assure that funding is available to assist victims during the three years following the death. Victims are most in need of assistance during that time.

#### 7505.3200 LOSS OF INCOME.

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

The Board reimburses claimants for net lost income. To calculate the amount of loss for a self-employed or unemployed victim, the current rule directs staff to use the victim's tax returns, W-2 forms, check stubs, signed contracts or receipts or other agency records to determine the victim's average income during the year prior to the crime. This rule has not worked well in cases where the claimant submits contracts or receipts instead of tax returns. These contracts or receipts were often unclear about the time period in which the work was to be done and the amounts to be paid. Also, it is usually unclear from these contracts or receipts what amount the claimant would have actually profited after paying expenses. Therefore, the proposed rule eliminates the use of contracts and receipts to verify income.

Also, in the proposed amendments, the Board is seeking to set a clear policy that those claimants who have not complied with state and federal tax filing requirements cannot seek payment for lost income from the Board. Many claimants have sought reimbursement based on income which they apparently earned, but did not report to the revenue department. Other claimants have sought reimbursement based on jobs they might have obtained. The proposed amendment clarifies that the Board will not reimburse for a loss of income from a particular job unless there is evidence that the claimant had been hired for that job. These changes to the current rule are necessary to prevent false

and fraudulent claims for lost wages.

These changes are reasonable because they ensure that lost income paid by the Board will be consistent with the victim's actual average income as verified by some type of official document. The paragraph precluding payment for unreported income is reasonable because claimants should not be allowed to claim more income for purposes of filing a reparations claim than they report to the Department of Revenue. This rule will also prevent payment of inflated claims for lost income. The state of Vermont has similar language in its rules on lost wages.

#### Subpart 5. Maximum number of weeks.

In recent years, the number of claims for long-term lost wages has increased significantly, but program funding has not kept pace. Some type of cut in benefits is necessary at this time in order for the program to operate within its budget. The Board cannot realistically expect to obtain the amount of funding which would be necessary to pay 100% of all expenses on all eligible claims. It is much more likely that growth in the number of claims submitted will continue at a faster rate than growth in the amount of allocated funds.

The proposed rule would set a limit on the length of compensation for lost wages of 26 weeks. Victims who are still unable to return to work after 26 weeks may request an extension for up to 13 additional weeks. The request must be supported by a physician's statement.

This limit on compensation for lost wages is reasonable because claimants who are completely disabled for a period greater than 6 months are eligible to apply for social security disability (SSD). Claimants can apply for social security at 6 months and it takes approximately 3 months to process applications. The social security disability pay can offset at least a portion of the claimant's lost income resulting from the crime. This rule preserves the Board's limited resources for the claimant's losses immediately following the crime and still allows claimants time to locate other resources. Other states, including Mississippi and Vermont, have a similar rule.

#### Subpart 6. Maximum number of hours.

The Board has received claims from individuals who worked in excess of 40 hours per week at several different jobs during the period just prior to the crime. After recovering from their injuries, they may be able to return to work for 40 hours a week at their primary job, but unable to resume all of their other additional jobs. Often they are never able to return to their previous rigorous schedule of 60-80 hours per week. However, it is unclear how long any person could keep working 80 hours per

week regardless of whether they were injured in a crime. It is pure speculation to assume that a person would continue to work excessive hours for the rest of his or her life. Yet, claimants have asked the Board to reimburse them for their extra jobs indefinitely even though they have returned to work full-time at their primary job. It is impossible for the Board to determine the actual amount of lost income from these additional periodic jobs due to a crime.

The proposed rule limits replacement of income to only 40 hours per week. For example, if the claimant was a police officer who was injured in a crime while on duty, most of his losses from his primary employer would be covered by worker's compensation. The Board would pay for any portion of his losses from his primary job that was not covered by worker's compensation. However, the Board would not cover losses from all of the officer's additional security jobs.

#### Subpart 7. Parent and spouse of the deceased.

Under the Board's current rule, parents and spouse of a victim who died are entitled to lost wages due to the death. In most cases, the parent or spouse misses 2-6 weeks of work after the death. However, in some cases the parent or spouse develops a long-term disability due to a grief response and depression. There is no limit in the current rules on the length of lost wages for these secondary victims. It is necessary to amend the rules to develop some guidelines for determining the appropriate length of time for compensation for lost wages.

The proposed rule would allow payment of lost wages for up to 6 weeks. The parent or spouse must then request an extension supported by a physician or psychologist verifying the continued emotional disability. The extension shall not exceed 20 weeks, so the total lost wages does not exceed 26 weeks.

This is a reasonable limitation for compensation for lost wages for secondary victims. If the family member has still not returned to work after 6 weeks, it is beneficial for them to see a physician or psychologist. They may have depression which should be treated. The total maximum of 26 weeks is imposed to make this subpart consistent with Subp. 5.

#### Subp. 8. Students.

The Board has received many claims from students whose schooling is temporarily interrupted due to a crime. The Board's policy has been that lost income does not include loss of scholarship or student loan funds, or loss of income due to delayed entry into the workforce. However, there is nothing currently in the rules on this subject. A rule is necessary to assure that the Board's policy is applied consistently to all

claimants.

The proposed rule precludes reimbursement of tuition, scholarships, loan funds, or loss of income due to a delay in schooling. This is a reasonable clarification to the Board's lost income rules. Tuition, scholarships and loans are not included in the definition of net income in the rules. Also, it would be impossible in most cases to try to determine the amount of income lost due to a delay in schooling. Unless there is a specific job offer that has been made and accepted by the claimant, it is pure speculation given today's job market to assume that the claimant would have gotten a job in his or her chosen field immediately upon graduation.

#### 7505.3500 PARENTS OF CHILD VICTIMS

The Board has received many claims from parents or guardians of injured victims seeking payment for the parent's or guardian's lost wages incurred as a result of taking care of the victim. The Board's rules currently allow payment to a parent to reimburse them up to \$10 per hour for 8 hours per day for home health care provided to a victim who is less than 21 years old. The rule was adopted to allow reimbursement to parents who miss work to take a child to counseling sessions or to visit the child while they are in the hospital due to injuries sustained in a crime. However, the current language calls for payment whether or not the parent misses work, and the use of the term "home health care" is misleading. The Board does not want to reimburse parents who do not have an actual loss. Also, the care provided by a parent does not constitute home health care in most cases. An amendment to the rule is needed to clarify that payment will only be made where the parent has actually lost income from work and the amount will be equal to the actual loss incurred.

It is also necessary to amend the rule to eliminate the age requirement for the victim and to add guardians to eligible claimants. The Board's experience has been that the parent or guardian is often involved in direct care for the victim regardless of the age of the victim. For example, the Board reviewed a case where the victim was single and 30 years of age, and the parents incurred a substantial loss while staying with the victim at the hospital. In cases where the parents are deceased or out of state, a guardian (e.g. a grandparent) may be providing this type of care to the victim and should be eligible for coverage.

These are reasonable changes because they will result in payment that matches the actual loss sustained. A parent who is unemployed and normally at home does not sustain any loss of income due to time spent taking care of an injured child. A parent who misses work does sustain an actual loss which is

verifiable.

EFFECTIVE DATE

It is necessary to include an effective date for these proposed amendments. There is nothing in current statute or rules which explains whether rules changes apply to "crimes committed" or "claims filed" after the date of enactment. The proposed rule provides that the rules should be effective for crimes committed on or after five working days after the notice of adoption is published. This is a reasonable effectiveness date that will allow the fair implementation of the new rules.

CONCLUSION

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

Dated: 11/28/95

*Marie Bibus*

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Executive Director  
Minnesota Crime Victims Reparations  
Board

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#### 7505.XXXX HEARING RIGHTS

The reparations statute calls for contested case hearings to resolve disputes between the claimant and the Board. However, the cost of administrative hearings is over \$500 per hearing. The Board simply does not have the funds to provide a hearing to every claimant regardless of the size of their claim.

The proposed rule provides for hearing rights if the amount of the claimant's disputed losses due to the crime exceed \$500. This is a reasonable limitation that will allow the Board to continue to operate within its budget while reserving hearings for claimants who sustained substantial losses due to a crime.

#### 7505.XXXX EFFECTIVE DATE

It is necessary to include an effective date for these proposed amendments. There is nothing in current statute or rules which explains whether rules changes apply to "crimes committed" or "claims filed" after the date of enactment. The proposed rule provides that the rules should be effective for crimes committed on or after the date of enactment. This is a reasonable effectiveness date that will allow the fair implementation of the new rules.

CONCLUSION

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

Dated: \_\_\_\_\_

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Marie Bibus  
Executive Director  
Minnesota Crime Victims Reparations  
Board