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TITLE 203 VICTIM SERVICES DIVISION

LSA Document #04-63(F)

DIGEST

Adds 203 IAC to establish procedures for the investigation, review, determination, and appeal of claims for victim assistance filed with the victim services division of the Indiana criminal justice institute. Effective 30 days after filing with the secretary of state.

203 IAC

SECTION 1. 203 IAC IS ADDED TO READ AS FOLLOWS:

TITLE 203 VICTIM SERVICES DIVISION

ARTICLE 1. ADMINISTRATIVE PROCEDURE

Rule 1. Investigation; Review; Determination; Appeal

203 IAC 1-1-1 Definitions

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1

Sec. 1. (a) The definitions in IC 5-2-6.1 and this section apply throughout this title.

(b) "Director" refers to the director of the division. *(Victim Services Division; 203 IAC 1-1-1; filed Aug 26, 2004, 1:30 p.m.: 28 IR 6)*

203 IAC 1-1-2 Purpose

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1

Sec. 2. The purpose of this title is to facilitate implementation and compliance with IC 5-2-6.1 by establishing procedures for the investigation, review, determination, and appeal of claims for victim assistance filed with the division. *(Victim Services Division; 203 IAC 1-1-2; filed Aug 26, 2004, 1:30 p.m.: 28 IR 6)*

203 IAC 1-1-3 Filing claims

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1

Sec. 3. (a) The time and place of filing claims are as follows:

(1) All claims must be filed within one hundred eighty (180) days of the date the crime was committed; provided, however, that for good cause the director may extend the time for filing for a period not exceeding two (2) years after such occurrence.

(2) All claims shall be filed in the office of the division in person or by certified mail on forms approved by the division.

(b) Contents of a claim are as follows:

(1) The claim shall be signed by the claimant. If the claim is filed by a minor or other incompetent, the claim may be signed and filed on his or her behalf by the parent, guardian, or other individual authorized to administer his or her affairs.

(2) Each claim shall be reviewed to ensure that it is complete. If the claim is not complete, written notice shall be given to the claimant with a brief statement requesting additional information. The claimant, within thirty (30) days of receipt of the request for additional information, shall supply that information to the division or request an extension of time, not to exceed sixty (60) days. The request shall be in writing to the director. If the claimant does not furnish additional information, or an extension granted by the director for good cause, the application shall be denied.

(Victim Services Division; 203 IAC 1-1-3; filed Aug 26, 2004, 1:30 p.m.: 28 IR 6)

203 IAC 1-1-4 Determination of eligibility

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1

Sec. 4. After a claim has been determined to contain sufficient identifying information, a claims analyst or other person designated by the director shall compare the claim to the eligibility standards described in IC 5-2-6.1. The claims analyst shall obtain supporting documentation necessary for the processing of a claim including, but not limited to, the following:

- (1) A police report including all supplemental reports and victim and witness statements made to law enforcement personnel.
- (2) Copies of charging informations and other prosecutorial data.
- (3) Copies of medical, funeral, and psychiatric bills.
- (4) Documentation regarding substitute child care expenses, employment, or earnings information.
- (5) Documentation concerning the following:
 - (A) Medical or life insurance benefits, or both.
 - (B) Social Security, pension, or retirement benefit information.
 - (C) Worker's compensation or unemployment compensation benefits.
- (6) Any other documentation necessary to determine eligibility.

(Victim Services Division; 203 IAC 1-1-4; filed Aug 26, 2004, 1:30 p.m.: 28 IR 6)

203 IAC 1-1-5 Investigation of claims; notice of determinations

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1

Sec. 5. (a) A claim, when accepted as complete or when set for hearing, shall be investigated by the division as to its validity, regardless of whether the alleged perpetrator has been apprehended for, prosecuted for, or convicted of any crime based upon the same alleged incident.

(b) All claimants under IC 5-2-6.1 shall cooperate with claims analysts and other representatives of the division in order to be eligible for an award. In the event that such cooperation is refused or denied, the division may, in the discretion of the director, deny such claims.

(c) The division shall obtain written verification of all events, claims, and sums of money alleged by the claimant to the greatest degree possible through the following:

- (1) Police agencies.
- (2) Providers of medical assistance and funeral services.
- (3) Employers.
- (4) Witnesses.
- (5) Any other relevant source.

If discrepancies arise, the division may interview the claimant, or victim if other than the claimant, in order to establish such verifications and consistency of the record of the claim.

(d) After receipt of all information necessary to process a claim, a claims analyst shall prepare a written case report and preliminary determination recommendation on the claim. The case report shall be delivered to the director, or the director's designee, and shall:

- (1) contain a statement of the facts alleged by the claimant;
- (2) describe the verifications and discrepancies; and
- (3) make a recommendation as to whether or not assistance should be provided, the amounts payable, including

reasonable attorney's fees, if any, and a rationale of the recommendation.

The director, or the director's designee, shall then review the entire file together with the case report and preliminary determination recommendation. If the director, or the director's designee, disagrees with the claims analyst's preliminary determination recommendation in whole or in part, the director, or the director's designee, shall remand the claim for further investigation or request that the matter be set for hearing.

(e) If the director, or the director's designee, agrees with the claims analyst's recommendation to deny the claim, the director, or the director's designee, shall issue to the claimant a preliminary determination stating the reason or reasons for the denial. The preliminary determination shall be sent by first class United States mail to the claimant's last known address. A claimant who disagrees with the preliminary determination may request a hearing. This request must be made in writing within thirty (30) days from the date of the preliminary determination. The claimant's failure to timely request a hearing shall constitute a waiver of the hearing and a consent to the agency action described in the preliminary determination, and a notice of final determination will then be issued to the claimant. Where timely requested, a hearing will be set and will be limited to the reason or reasons for the denial stated in the preliminary determination.

(f) If the director, or the director's designee, agrees with the claims analyst's recommendation to award the claim, the director, or the director's designee, shall issue a notice of award stating the amount of the award and its allocation. If a claimant disagrees with the notice of award, the claimant may request a hearing. This request must be made in writing within thirty (30) days from the date of the notice of award. (*Victim Services Division; 203 IAC 1-1-5; filed Aug 26, 2004, 1:30 p.m.: 28 IR 6*)

203 IAC 1-1-6 Hearings

Authority: IC 5-2-6.1-46

Affected: IC 4-21.5; IC 5-2-6.1

Sec. 6. (a) When a hearing is ordered, the claimant, counsel, and all parties whose testimony is deemed necessary by the division shall be notified in writing of the time, place, and scope of the hearing in accordance with IC 4-21.5. Any subsequent notices of hearing due to a request for continuation by the claimant or claimant's attorney shall be sent by first class United States mail.

(b) All hearings shall be conducted in an orderly manner. All witnesses shall testify under oath or by affirmation, and all testimony shall be recorded. The hearing officer shall not be bound by common law, statutory rules of evidence, or judicial rules of procedure.

(c) The claimant has the burden of proving his or her right to compensation by a preponderance of the evidence.

(d) The hearing officer may receive as evidence any statement, document, information, or matter that is deemed relevant and of such a nature as to afford the parties a fair hearing. The hearing officer may also accept hospital and physician's records and reports as proof of the injury sustained without requiring the presence of the attending physician at the hearing.

(e) The hearing officer may direct medical examination of the claimant by a physician designated by the hearing officer, having due regard for the convenience of the claimant.

(f) The claimant shall be present at the hearing and will be allowed to present testimony and cross-examine witnesses in person or by counsel.

(g) Hearings may be adjourned on the motion of the hearing officer or upon timely request of any interested party. The failure of the claimant to appear at the time of the hearing may result in denial of the claim; provided, however, in the discretion of the hearing officer upon good cause shown, such failure to appear may be excused and a new hearing scheduled.

(h) Hearings shall be open to the public except that the hearing officer may exercise discretion to hold the hearing in private in the interest of the victim or society where justice requires.

(i) Upon the application of the claimant or by counsel, submitted in affidavit form, or upon application of the hearing officer, a case may be opened for further investigation. If the hearing officer finds it necessary, further testimony may be taken at any time prior to the final determination of the hearing. The division may, on its own motion, reinvestigate or reopen cases at any time as it deems necessary.

(j) All hearings of the division shall be held at its offices in Indianapolis, Indiana. (*Victim Services Division; 203 IAC 1-1-6; filed Aug 26, 2004, 1:30 p.m.: 28 IR 7*)

203 IAC 1-1-7 Attorneys; representation

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1

Sec. 7. (a) Claimants have the right to be represented before the division or any representatives thereof at all stages of the proceeding by an attorney-at-law duly licensed to practice in the state of Indiana.

(b) The attorney shall file a notice of appearance prior to or at his or her first appearance. Such notice shall contain the name of the party represented and the attorney's name, address, and telephone number.

(c) If any party designates an attorney-at-law and such attorney has executed and filed with the division a notice of appearance in the matter, the notice shall remain in effect until:

- (1) the party represented files with the division a written revocation of the attorney's authority;
- (2) the attorney files with the division a written statement of his or her withdrawal from the case;
- (3) the attorney states on the record at a division hearing that he or she is withdrawing from the case; or
- (4) the division receives notice of the attorney's death or disqualification.

(d) After filing of a notice of appearance in accordance with this rule, and so long as it may remain in effect, copies of all written communications or notices to the claimant shall be sent to the attorney in lieu of the party so represented. Service upon the attorney shall be deemed service on the party so represented.

(e) Attorney's fees shall be approved by the division and shall be commensurate with services rendered to the claimant subject to the limitations of IC 5-2-6.1. (*Victim Services Division; 203 IAC 1-1-7; filed Aug 26, 2004, 1:30 p.m.: 28 IR 8*)

203 IAC 1-1-8 Subpoenas; subpoenas duces tecum; depositions

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1

Sec. 8. (a) The division shall issue subpoenas and subpoenas duces tecum, either at its own instance or upon written application of any party made not less than ten (10) days prior to the hearing. The ten (10) day provision may be waived at the discretion of the director. Subpoenas and subpoenas duces tecum shall comply with the Indiana rules of procedure.

(b) The issuance of a subpoena at the application of a party shall depend upon a showing of necessity. A written request shall designate the names and addresses of witnesses and the locations of:

- (1) documents;
- (2) books;
- (3) payrolls;
- (4) personal records;
- (5) correspondence;
- (6) papers; and
- (7) any other evidence;

necessary to the claim being heard.

(c) The cost of service, witness, and mileage fees shall be borne by the party at whose request a subpoena is issued.

(d) The division, on its own motion or on application of the claimant, shall take or cause to be taken affidavits or

depositions of witnesses residing within or without the state whenever it deems such procedure necessary. The division may set appropriate terms and conditions pertaining to the taking of affidavits or depositions. The requesting party shall bear the expense. (*Victim Services Division; 203 IAC 1-1-8; filed Aug 26, 2004, 1:30 p.m.: 28 IR 8*)

203 IAC 1-1-9 Awards

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1

Sec. 9. (a) No award will be made on a claim unless the claimant has incurred a minimum out-of-pocket loss of one hundred dollars (\$100).

(b) No award may be made unless the division finds the following:

(1) A violent crime was committed.

(2) The crime occurred within the state though the victim need not be a resident of the state at the time of occurrence of the crime upon which the claim is based.

(3) The crime directly resulted in personal physical injury or death of the victim.

(4) The crime was reported to a law enforcement officer within forty-eight (48) hours after the occurrence of the crime, and the claimant has cooperated fully with law enforcement personnel to solve the crime, unless the director, for good cause shown, finds such failure to report or cooperate with law enforcement officials to have been justified.

(c) An award made under this rule shall be in an amount not to exceed out-of-pocket expenses, together with loss of actual earnings consistent with this rule and other actual expenses resulting from the bodily injury or death of the victim.

(d) An award made under this rule shall be in an amount not to exceed out-of-pocket medical expenses, together with:

(1) loss of actual earnings consistent with this rule;

(2) reasonable child care expenses not to exceed one thousand dollars (\$1,000);

(3) loss of financial support consistent with this rule; and

(4) other actual expenses;

resulting from the bodily injury or death of the victim. In no case shall the total amount of an award exceed fifteen thousand dollars (\$15,000) per victim.

(e) In instances of claims based on physical injuries or death, the division shall exercise its discretion in determining whether payments are to be made in a lump sum or periodically.

(f) When disbursing an award, the division shall apply the proceeds of the award in the following order:

(1) Reasonable attorney's fees as determined by the division.

(2) Outstanding medical and funeral expenses.

(3) Reimbursement of compensable out-of-pocket expenses.

(4) Loss of income the victim would have earned had the victim not been injured.

(5) Loss of financial support that the victim would have supplied to legal dependents had the victim not died or been injured.

In the event that the expenses in subdivision (2) exceed the total amount of the award, the division shall prorate the award among the providers in that category.

(g) If there are two (2) or more persons entitled to an award as a result of the death of a person that is the direct result of a crime, the director shall apportion the award among the claimants in the proportion the deceased victim contributed to their support. In the event of a change of dependency of the claimant or any one (1) of them, either by marriage or otherwise, the division may change the proportion and the amount of the payments to the claimant.

(h) If the recipient of an award is a minor, the director may require that a guardianship be established and the award be delivered to the guardian of the minor's estate.

(i) In determining whether to award loss of income to a victim who has died or been injured, the following factors may be considered by the division:

- (1) Whether the victim was employed at the time of injury or death.
- (2) The victim's employment history, education, and job skills.
- (3) The victim's age, life expectancy, and past earnings.
- (4) Other relevant factors.

(j) The part of each award covering unpaid expenses of a claimant may be made payable directly to each creditor subject to the claimant's consent.

(k) An emergency award of not more than five hundred dollars (\$500) may be made by the director or his or her designee prior to the determination of final award if it is determined by the director that a severe financial hardship exists.

(l) No request for an emergency award shall be considered unless a claim has been filed with the division. The claim and the request for the emergency award may be filed simultaneously.

(m) A request for an emergency award may be made either by mail or in person upon an affidavit setting forth in detail the grounds.

(n) The amount of an emergency award shall be deducted from the final award made by the division, and, if no final award is made or the amount of the emergency award exceeds the amount of the final award, the amount shall be recoverable from the claimant.

(o) Compensation by the division for funeral, burial, or cremation expenses shall not exceed four thousand dollars (\$4,000) per victim per claim.

(p) Compensation by the division for outpatient psychological or psychiatric counseling, or both, shall not exceed the following:

- (1) One thousand dollars (\$1,000) for mental health facilities or counselors who do not use a sliding fee schedule based on the victim's income.
- (2) One thousand five hundred dollars (\$1,500) for mental health facilities or counselors who use a sliding fee schedule based on the victim's income. Prior to qualifying under this subdivision, the sliding fee schedule must be submitted to the division for approval.

(Victim Services Division; 203 IAC 1-1-9; filed Aug 26, 2004, 1:30 p.m.: 28 IR 8)

203 IAC 1-1-10 Appeals; board review

Authority: IC 5-2-6.1-46

Affected: IC 4-21.5; IC 5-2-6.1

Sec. 10. (a) The state or claimant may appeal the findings of the hearing officer within twenty-one (21) days after the date of receipt of the hearing officer's determination by filing a written appeal with the director who shall review the written determination of the hearing officer and place the appeal on the docket for review by the victim services division of the institute's board of trustees.

(b) An appeal under this section shall be limited to those facts evidenced in the record of proceedings and may, at the discretion of the victim services division of the institute's board of trustees, be supplemented with a written statement by either the division or the claimant.

(c) A decision by the victim services division of the institute's board of trustees shall be conclusive and binding upon the state and the claimant, subject to judicial review under IC 4-21.5. *(Victim Services Division; 203 IAC 1-1-10; filed Aug 26, 2004, 1:30 p.m.: 28 IR 10)*

Rule 2. Sex Crime Victim Compensation; Application Procedures

203 IAC 1-2-1 Eligibility and cooperation

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1; IC 16-21-8

Sec. 1. (a) Beginning September 1, 1985, a person who seeks hospital or licensed medical service provider emergency room treatment for injuries and trauma resulting from an alleged sexual assault shall be considered an alleged sex crime victim eligible to have the costs of their emergency room treatment paid by the fund to the servicing hospital or licensed medical service provider if:

(1) Within forty-eight (48) hours following the alleged crime:

(A) a police report regarding the incident has been filed; or

(B) the hospital or licensed medical service provider, sex crime victim, or a responsible party has contacted an appropriate law enforcement agency.

(2) A representative of a law enforcement agency must, in writing, confirm that the sex crime victim has cooperated in the initial law enforcement investigation and report.

(b) The sex crime victim must consent to the emergency room treatment and evidence-gathering physical examination, and the treatment must be ordered by the attending physician. If the sex crime victim is a minor or incompetent, the sex crime victim's parent or guardian, an officer of the court, or other authorized individual may sign for the sex crime victim. The sex crime victim or other authorized individual must sign and complete the appropriate sections of the division's claim form. The eligibility requirements in subsection (a)(1) and (a)(2) may be suspended if the director of the division finds a compelling reason to do so. A participating hospital or licensed medical service provider is to treat all alleged sex crime victims and shall render services at no cost to the alleged sex crime victim despite any delays in payment from the fund. A hospital or licensed medical service provider shall provide medical services to all alleged sex crime victims without making any legal determinations as to whether the patient has actually been sexually assaulted or whether the hospital or licensed medical service provider will be eligible for payment when the patient has executed the prescribed fund application for payment.

(c) The fund may deny payment to the hospital or licensed medical service provider where the patient fails to meet the eligibility requirements as listed in subsection (a), in IC 5-2-6.1, or in IC 16-21-8. If payment is denied, the hospital or licensed medical service provider will be notified and may then bill the patient or collateral source for services rendered. (*Victim Services Division; 203 IAC 1-2-1; filed Aug 26, 2004, 1:30 p.m.: 28 IR 10*)

203 IAC 1-2-2 Application for reimbursement; information required

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1; IC 16-21-8

Sec. 2. (a) To receive payment, the hospital or licensed medical service provider, sex crime victim, and, if present, a law enforcement agent must supply information regarding the alleged sex crime on a claim form prescribed by the division completed and filed not later than ninety (90) days from the date of the first emergency room medical services provided. The hospital or licensed medical service provider shall attach to the application the patient's emergency department report of the date of treatment including the following:

(1) A copy of the medical examination report by the attending physician.

(2) A narrative statement describing the alleged sex crime, including the time and place thereof, and a brief description of the injuries sustained.

(3) An itemized statement showing all services provided to the alleged sex crime victim that were a direct and proximate result of the alleged sex crime.

(b) The division may also require additional information as needed to determine eligibility. The hospital or licensed medical service provider shall provide to the patient, at the time of the sex crime victim's release from the hospital or licensed medical service provider, the fund information sheet. Applications for payment for the following subsequent medical procedures shall be filed within thirty (30) days of the services rendered:

(1) Sexually transmitted disease testing.

(2) Pregnancy testing.

(3) Mental health counseling for problems directly related to the sexual assault.

(c) If an application is denied or additional information from the hospital or licensed medical service provider is required,

the division shall so notify the hospital or licensed medical service provider in writing. A hospital or licensed medical service provider has thirty (30) days from the date of the division's notification to present the information required to the division. The additional information will then be evaluated.

(d) All applications should be mailed to or filed in person at the division's office located in Indianapolis, Indiana. (*Victim Services Division; 203 IAC 1-2-2; filed Aug 26, 2004, 1:30 p.m.: 28 IR 10*)

203 IAC 1-2-3 Covered services

Authority: IC 5-2-6.1-46

Affected: IC 5-2-6.1; IC 16-21-8

Sec. 3. (a) As used in this rule, "emergency hospital service" means outpatient services rendered in the emergency room that are a direct and proximate result of the alleged sex crime, including, but not limited to, at the division's discretion, the following:

(1) Reasonable costs of counseling services for the sex crime victim directly relating to the assault, rendered within one (1) year following the initial emergency room treatment. At the division's discretion, other persons deemed necessary for the sex crime victim's sex crime crisis counseling may also be eligible for counseling services. The counseling costs are reimbursable only when services are rendered by or through a hospital or licensed medical service provider participating in the fund. Included in the itemized statement of counseling services shall be:

(A) a delineation of the party receiving the service;

(B) the date of the subsequent counseling; and

(C) the date of the initial emergency room treatment.

(2) Evidence-gathering and diagnostic physical examinations.

(3) Initial pregnancy and sexually transmitted disease testing related to the alleged sex crime.

(4) Other itemized laboratory work including the following:

(A) Alcohol and drug testing.

(B) Syphilis testing up to ninety (90) days following the alleged sex crime.

(C) Pregnancy and other sexually transmitted disease testing up to thirty (30) days following the alleged sex crime.

(5) Suturing and care of any wounds, including anesthesia and prescribed medications.

(6) X-rays.

(7) Other limited outpatient emergency treatment at the discretion of the division.

(b) The amounts charged to the division by a hospital or a licensed medical service provider for any qualifying emergency hospital service shall be commensurate with the service actually rendered.

(c) Noncompensable services include the following:

(1) Inpatient hospital services.

(2) Nonsexual assault related services.

(d) If a patient is subsequently admitted to the hospital on an inpatient basis following emergency room treatment, the patient may apply to the division and meet separate eligibility requirements to receive benefits for inpatient treatment.

(Victim Services Division; 203 IAC 1-2-3; filed Aug 26, 2004, 1:30 p.m.: 28 IR 11)

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