STATE OF MISSISSIPPI

JIM HOOD
ATTORNEY GENERAL

ADMINISTRATIVE RULES COMPILATION
TITLE 03 – OFFICE OF THE ATTORNEY GENERAL

Part 1 – Victim Compensation Division

Part 2 – Law Enforcement Officers and Fire Fighters Disability Trust Fund – Administration Division

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Part 1 - Victim Compensation Division

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Title 03 – Office of the Attorney General
Part 1 - Division of Victim Compensation

Chapter 01 General Information and Definitions

100 Purpose

It is the intent of the Legislature to provide a method of compensating and assisting those persons who are innocent victims of criminal acts within the state and who suffer bodily injury or death and of assisting victims of crime through information referrals and advocacy outreach programs. To this end, it is the Legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons. It is the further intent of the Legislature that all agencies, departments, boards and commissions of the state and political subdivisions of the state shall cooperate with the Attorney General's Office in carrying out the provisions of this chapter. [Miss. Code Ann. § 99-41-3]

101 Legal Authority

The Office of the Attorney General is authorized to establish and enforce these rules and procedures by virtue of "The Mississippi Crime Victims' Compensation Act of 1991." [Miss. Code Ann. § 99-41-1, as amended]

The following administrative rules reflect the statutory changes pursuant to Senate Bill 2562 of the 2004 Regular Legislative Session, Senate Bill 2817 of the 2005 Regular Legislative Session, House Bill 1522 of the 2007 Regular Legislative Session, and Senate Bill 2709 of the 2008 Regular Legislative Session. The Division of Victim Compensation will administer claims made pursuant to the Mississippi Victims' Compensation Act in accordance with the rules and regulations.

102 Definitions: As used in these rules, the following definitions shall apply unless specifically stated otherwise.

1. "Claimant" as defined in § 99-41-5.

2. "Contribution or contributory conduct" means a voluntary action by the victim/claimant which, directly or indirectly, produced the victim/claimant's injury or death at the time of the crime which gave rise to the claim. This action may include, but is not limited to provocation, consent or incitement by the victim/claimant.

3. "Criminal justice proceedings" means any investigative or court proceedings of the case

upon which the claim is based. Such proceedings include: appointments with investigators, prosecuting attorney, and/or correction officials; court proceedings, such as grand jury, trial, plea hearings, sentencing hearings; parole board hearings and other post conviction hearings.

4. "Criminally injurious conduct" as defined in § 99-41-5.

5. "Director" means the Director for the Division of Victim Compensation.

6. "Division" means the Division of Victim Compensation.

7. "Family member" means the victim's spouse, parent, grandparent, stepparent, child, stepchild, grandchild, brother, sister, half brother, half sister or spouse's parent.

8. "Imminent Danger" means that factors exist that would cause a reasonable person in the victim's circumstances to fear immediate, impending or further harm by the offender.

9. "Mental health counseling and car" means problem solving and support services which address emotional issues that result from trauma of criminal victimization and have as a primary purpose the enhancement, protection and restoration of a person's sense of well being and social functioning after victimization.

10. "Personal injury" means actual bodily harm or psychological trauma as a direct result of a criminally injurious act. "Psychological trauma" means a substantial personal disorder of emotional processes, thought or cognition which impairs judgment, behavior or ability to cope with the ordinary demands of life. Injury of psychological trauma is also considered when a person witnesses a crime.

11. "Victim" means a person who suffers personal injury or death as a result of criminally injurious conduct. This definition may include a person who suffers personal injury or death as a result of criminally injurious conduct while going to the aid of another person or a duly sworn law enforcement officer, or while attempting to prevent a crime from occurring.
    a. Aid must have been rendered in a reasonable and lawful manner;
    b. Attempting to prevent a crime from occurring must have been done in a reasonable and lawful manner.

103 <u>Program Description</u>

1. The Victim Compensation Fund provides financial assistance to innocent victims of criminal acts who have suffered personal injury or death. Compensation may be awarded

for medical care, rehabilitation, counseling services for the victim and the victim's family member(s), funeral expenses, work loss for the victim or claimant and loss of economic support of dependents of deceased victims, relocation assistance for domestic violence victims, temporary housing assistance for domestic violence victims, court related transportation, execution travel, crime scene cleanup, and repair and replacement costs. Compensation Expenses which are paid by collateral sources, property loss or damage, pain and suffering, attorney fees, and expenses which are not directly related to the crime injuries are not eligible for compensation. Claimants must show they have suffered an economic loss as a result of the criminally injurious conduct in order to be eligible for compensation.

2. Awards payable to a victim/claimant, all other claimants and/or providers may not exceed Twenty Thousand Dollars ($20,000.00) in the aggregate. Limitations include Fifteen Thousand Dollars ($15,000.00) for medical costs; wage loss and economic loss of dependents payable up to Six Hundred Dollars ($600.00) per week for a maximum of fifty-two (52) weeks; Three Thousand Five Hundred Dollars ($3,500.00) for mental health counseling and care; Six Thousand Five Hundred Dollars ($6,500.00) for funeral expenses and Eight Hundred Dollars ($800.00) for funeral transportation; Two Thousand Dollars ($2,000.00) for relocation assistance for domestic violence victims and Five Hundred Dollars ($500.00) Dollars for temporary housing for domestic violence victims; One Thousand Dollars ($1,000.00) for crime scene cleanup, One Thousand Dollars ($1,000.00) for court related travel, and One Thousand Dollars ($1,000.00) for property damage repair/replacement costs for exterior windows, doors, locks, or security devices of a residential dwelling. Other awards may be payable and are discussed further in the following chapters. In addition, other limitations do apply and are discussed further in the following chapters.

104 Application Procedures

1. A claim for compensation must be filed on the application form prescribed by the Division of Victim Compensation and received by the Division no later than thirty six (36) months after the occurrence of the crime; except in child sexual abuse cases, the claim must be filed within thirty six (36) months after the crime was reported to law enforcement or the Department of Human Services, but in no event later than the child's twenty-first birthday.

2. For good cause, the director may extend the time period allowed for filing a claim for an additional period not to exceed (12) months. Good cause will be determined on a case-by-case basis.

3. An application postmarked within the prescribed time period shall be considered timely filed.

4. A victim/claimant must notify the Division of Victim Compensation of any changes to address or telephone numbers.

5. Upon receipt of a completed application, a thorough claim investigation is initiated to determine eligibility and compensation award. After processing an application, the Director will enter an Order of Determination. The Order shall report the following: findings of fact; decision of eligibility; amount (if any) of compensation to be awarded; payee of the compensation award; percentage share of the total of any compensation award; dollar amount each payee shall receive; and method of payment.

6. The victim/claimant who disagrees with the decision(s) of the Order has the right to request an appeal. See Chapter 05 for rules and regulations pertaining to appeal.

105 Obtaining Program Information

For compensation applications:

Call: 601-359-6766 or 1-800-829-6766

Write: Victim Compensation Division
Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205

Fax: 601-576-4445

Website: www.ago.state.ms.us

Chapter 02 Eligibility Requirements

200 Eligible Claimants

1. "Claimant" means any of the following persons applying for compensation under this chapter:
   a. A victim;
   b. A dependent of a victim who has died because of criminally injurious conduct;
   c. The surviving parent, spouse, child or any person who is legally obligated to pay or has paid medical, funeral, or other allowable expenses incurred as a result of the victim's death;
   d. Family members of the victim who incur mental health counseling expenses as a result of

the victim's death; and

e. A person authorized to act on behalf of persons enumerated in subparagraph (a), (b), (c), and (d) of this paragraph; however, " claimant shall not include any of the following: provider or creditor of victim; assignee of provider or creditor, including a collection agency; or another person or entity other than those enumerated in this paragraph.

2. The person authorized to act on behalf of any of the persons enumerated in § 200(1) (b) shall be limited to a legal guardian or conservator.

3. Exceptions:
   a. A person who purchases products or services related to funeral expenses for a deceased victim;
   b. The family members, of the victim, who incur mental health counseling expenses.
   c. The family members of the victim who incur funeral transportation expenses, bereavement lost wages and/or lost wages to make funeral arrangements or attend services. In the case of more than one family member, the Director may prorate the total compensation.
   d. The family members of the victim who, on behalf of the victim, incur lost wages to assist the victim during recovery of physical injuries and/or psychological trauma.
   e. The family members of the victim who, on behalf of the victim, incur lost wages to attend criminal proceedings of the case which the claim is based.
   f. The family members of the victim who, on behalf of the victim, incur court related travel, medical/mental health travel, domestic violence temporary housing assistance mileage, and/or domestic violence relocation assistance mileage. In the case of more than one family member, the Director may prorate the total compensation.
   g. Other individuals who, on behalf of the victim, incur court related travel, medical/mental health travel, domestic violence temporary housing assistance mileage, and/or domestic violence relocation assistance mileage if no family member assisted or a family member was not available to assist the victim with travel/mileage.

4. Limitations for claimant eligibility for receiving bereavement lost wages and transportation costs to arrange and/or attend the funeral/services include, but are not limited to the following:
   a. No more than two (2) claimants per claim will be eligible to receive transportation costs to arrange or attend funeral/burial services.
   b. If more than two (2) persons per claim apply for transportation costs to arrange or attend the funeral/burial services, the two (2) eligible claimants will be determined by the director.
   c. The following factors will be used to determine the two (2) eligible claimants:
      i. The person legally obligated to pay or the person who has paid for a homicide victim's funeral expenses;

ii. The person(s) who paid for the funeral/burial expenses of a homicide victim;
iii. The designated decision maker(s) of a homicide victim;
iv. The designated person(s) to arrange funeral/burial services;
v. The date application(s) received;
vi. Requested verifying documentation received;
vii. The familial relationship between the victim and applicant.
viii. Any other relevant factor(s).

d. Exception: At the discretion of the director, the maximum number of eligible claimants may be increased beyond two (2).

201 Persons Who May Receive Compensation

1. Eligible claimants as defined above in § 200;

2. Person legally dependent upon financial support from the victim at the time of the victim's death;

3. A Mississippi resident who suffers physical injury or death while in any other state or foreign country, provided that state or foreign country does not have a crime victim compensation program and all other eligibility criteria are met. Except in cases of foreign or mass terrorism, other crime victim compensation programs will not be considered as a collateral source; and

4. An individual who witnesses a crime and suffers psychological trauma.

202 Seventy-Two (72) Hour Reporting Requirement

1. Compensation shall be denied if the crime was not reported to a law enforcement officer within seventy-two (72) hours after its occurrence, or the victim/claimant must show good cause for failing to report within such time.

2. Victim/claimant is considered to have made a report to law enforcement when the victim/claimant has provided a true and accurate report of the incident, which shall include to the best of the victim/claimant's knowledge:
   a. The nature of the crime;
   b. The location of the crime;
   c. The name, whereabouts and description of the suspect, if known; and,
   d. The names of witnesses.

3. This requirement is not met if the victim/claimant provides only his/her name and the fact

that they were victimized.

4. Good cause will be determined on a case-by-case basis. Lack of knowledge about the Division of Victim Compensation is not an example of good cause. Determining good cause for not reporting within seventy-two (72) hours includes, but is not limited to, the following:
   a. The victim's age;
   b. The physical incapacity of a victim/claimant. If the crime was not reported within seventy-two (72) hours, it must have been reported within seventy-two (72) hours after the victim's release from the hospital; and/or,
   c. The psychological state and any compelling health or safety reasons that would jeopardize the well-being of the victim/claimant.

5. The Division of Victim Compensation may waive the seventy-two (72) hour time period required if good cause is shown.

203 Participation In or Commission of a Crime

1. Compensation shall be denied if the injury or death was caused by the victim/claimant assisting, attempting or committing a criminal act at the time he/she became a victim.

2. In determining participation in or commission of a crime as it relates to § 203 (1), the Division of Victim Compensation may consider all relevant information and circumstances, including, but not limited to:
   a. Whether the victim/claimant was convicted of a crime relating to the incident which gave rise to the claim;
   b. Whether there is good cause to believe that the victim/claimant was participating in a criminal act relating to the crime which gave rise to the claim;
   c. Whether there is good cause to believe that the victim/claimant engaged in an ongoing course of criminal conduct within a reasonable time of the date of the crime which gave rise to the claim;
   d. Whether the victim/claimant was buying, selling or using illegal drugs at the time of the incident which gave rise to the claim;
   e. Whether the victim/claimant was under the legal age and drinking alcohol at the time of the crime which gave rise to the claim; or,
   f. Whether the victim/claimant was frequenting a place where drugs and/or alcohol are illegally bought, sold or consumed; where there is solicitation of prostitution; or where there is illegal gambling.

3. Compensation shall not be awarded to any claimant or victim who has two previous felony convictions.

4. Compensation may be denied or reduced to a victim or claimant who, at the time of the crime upon which the claim for compensation is based, was engaging in or attempting to engage in other unlawful activity unrelated to the crime upon which the claim for compensation is based. See Mississippi Code Annotated Section 99-41-17 (4). For the purpose of this rule, other unlawful activities include, but are not limited to the following:
   a. Any unlawful act not covered by other Sections of Mississippi Code 99-41-17.
   b. Misdemeanors, such as illegal drug use/possession, burglary, shoplifting, hitchhiking, trespassing, illegal gambling, and seat belt violation.

5. Additional criminal/delinquent activity exclusions apply and are found in Section 99-41-17 of the Mississippi Code.

6. When it is determined that the provisions of § 203 apply, the burden of proof shall be upon the victim/claimant to prove the eligibility of the claim.

204 Unjust Benefits

1. Compensation shall be denied if the award will unjustly benefit the offender.

2. The Division of Victim Compensation may consider all relevant information and circumstances in determining if compensation would unjustly benefit the offender, including but not limited to:
   a. Whether the victim/claimant has reported the crime and is cooperating with the criminal justice system in the investigation and the prosecution of the offender;
   b. Whether the victim/claimant will prevent access by the offender to compensation paid to the victim/claimant; or,
   c. Whether the award is essential to the well-being of the victim and other innocent and dependent family members.

3. A determination of "unjust benefit" will not be based solely on the following:
   a. Victim/claimant's familial relationship to the offender;
   b. Sharing of a residence by the victim/claimant and the offender; or,
   c. Presence of the offender in the household at the time of the award.

4. The presence of the offender in the household is only one factor to be considered in determining unjust benefit, and a case-by-case determination will be made according to the facts of each situation.

205 Motor Vehicle Incidences

1. Compensation shall be denied if the victim was injured as a result of the operation of a motor vehicle, boat or airplane unless:
   a. The vehicle was used by the offender while under the influence of alcohol or drugs;
   b. The vehicle was used by the offender as a weapon in a deliberate attempt to injure or cause the death of the victim;
   c. The vehicle was used by the offender in a hit-and-run incident by leaving the scene of an accident as specified in Section 63-3-401 of the Mississippi Code; or
   d. The vehicle was used by the offender to flee apprehension by law enforcement as specified in Sections 97-9-72 and 97-9-73 of the Mississippi Code.

2. When evaluating incidents involving motor vehicles, factors to consider include, but are not limited to:
   a. If offender is apprehended, whether charges are filed against the offender;
   b. Whether the victim/claimant is cited in the law enforcement report as the primary collision factor or proximate cause of the accident;
   c. Whether charges are filed against the victim/claimant;
   d. Whether there is a preponderance of evidence that the offender was driving while under the influence of alcohol and/or drugs (DUI); and,
   e. Whether there is a preponderance of evidence that the vehicle was used by the offender as a weapon in the deliberate attempt to injure or cause the death of the victim.
   f. Whether there is a preponderance of evidence that the vehicle was used by the offender in a hit-and-run accident; or
   g. Whether there is a preponderance of evidence that the vehicle was used by the offender to flee apprehension by law enforcement.

3. Incidents involving the victim/claimant as a passenger of a DUI driver will be evaluated on a case-by-case basis.

4. A claim shall be denied for contributory conduct if the victim/claimant knew or reasonably should have known that the driver was DUI and nevertheless was a willing passenger.

5. Exceptions to § 205(4) above include:
   a. Victim is a minor child or dependent child of the driver; or,
   b. Evidence demonstrates the victim/claimant was an unwilling passenger.

6. Incidents involving victim/claimant who is DUI shall be denied if the victim/claimant:
   a. Was driving with a blood alcohol content that is equal to or exceeds the legal limit for driving;
   b. Was driving while under the influence of drugs; and,
   c. The above, 6(a) or (b) are corroborated by law enforcement or medical evidence.

d. These conditions apply regardless of whether the victim/claimant's condition caused the accident.

206 Victim or Claimant Provided False or Misleading Information to the Division

The claim shall be denied if the claimant and/or victim knowingly furnished any false or misleading information, or knowingly failed or omitted to disclose a material fact or circumstance with the intent to defraud the Division for compensation.

207 Cooperation with Law Enforcement and Prosecutors

1. Compensation may be denied, withdrawn or reduced upon a finding that the claimant and/or victim have not fully cooperated with law enforcement agencies and prosecuting attorneys.

2. Cooperation with law enforcement and prosecuting attorneys means the victim/claimant has cooperated with their reasonable requests of the investigation and prosecution of the incident.

3. Reasonable cooperation will be determined on a case-by-case basis taking into consideration the victim/claimant's age, physical condition and psychological state. Reasonable cooperation includes, but is not limited to the following:
   a. The victim/claimant provided law enforcement with a true and accurate report of the crime;
   b. Participation in the investigation of the crime to assist law enforcement in the identification of an offender as requested, including the review of photos and police line ups; and,
   c. Participation in prosecuting procedures, including deposition and trial testimony as requested.

4. Consideration of relevant circumstances may be given in cases of domestic violence and sexual assault. The Division may waive this requirement if there is compelling health or safety reasons that would jeopardize the well being of the victim/claimant.

208 Contributory Conduct

1. Compensation shall be denied or reduced upon finding that the victim's/claimant's conduct contributed to the events that led to the crime.

2. Compensation shall be denied or reduced to the extent of the degree of responsibility for

the cause of injury or death attributable to the victim's/claimant's actions and/or involvement in the events that led to the crime. Compensation shall be denied or reduced if contributory conduct is determined.

3. Eligibility for compensation can be affected by a victim's/claimant's involvement in the events that led to the crime. The victim's/claimant's actions do not have to be illegal to be considered contributory conduct. Such actions must relate significantly to the occurrence that caused the victimization and be such that a reasonable or prudent individual would know that the actions could lead to their victimization.

4. Contributory conduct is a factor when the victim/claimant knowingly participated in conduct that:
   a. Caused, resulted in, or reasonably could have led to the specific crime which caused the crime or death; or
   b. Was itself clearly wrongful or illegal, thereby placing himself or herself in a position to be injured or to become a victim; or,
   c. Clearly put himself or herself into a situation where the crime was a reasonably expected result and/or which a prudent individual would have avoided.

5. Contributory conduct to the offense is determined by the victim's/claimant's action or nature of the victim's/claimant's involvement in the events leading up to the crime. The following factors will serve as a guideline in determining the degree of contribution assessed:
   a. If it appears the victim/claimant provoked, consented, incited or continued the escalation of the crime, a contribution factor shall be assessed;
   b. If it appears the victim/claimant was provoked by the offender in a manner where bodily harm to the victim/claimant appeared unlikely, and the victim/claimant used poor judgment, a contribution factor shall be assessed;
   c. If it appears the victim/claimant was injured as a result of poor judgment or as a result of his conduct not being that of a prudent person, a contribution factor shall be assessed;
   d. If it appears the victim's/claimant's use of alcohol or drugs impeded his or her condition at the time of the crime in such a manner that their injuries were caused and/or greater because of alcohol or drug use, a contribution factor shall be assessed; and/or,
   e. If it appears that the offender was provoked by the victim/claimant in a manner where bodily harm to the offender appears intentional or unquestionable, a contribution factor shall be assessed and the claim shall be denied.

6. The Division may consider all relevant information and circumstances, including, but not limited to:
   a. Level of responsibility of the victim's/claimant's conduct;

b. Foreseeability of the consequences of such conduct;
c. Ability to avoid the situation (victim's/claimant's failure to retreat or withdraw from a situation where an option to do so was readily available);
d. The degree of harm that occurred as a result of the crime based upon clear evidence that the victim/claimant was armed or acting in a provoking manner greater than or equal to that of the offender;
e. Whether the victim/claimant used fighting words, obscene or threatening gestures;
f. Whether there is a direct causal relationship between the victim's/claimant's actions and the crime; and/or,
g. § 208(4) and § 208(5).

7. When it is determined that the provisions of § 208 apply, the burden of proof shall be upon the victim/claimant to prove the eligibility of the claim.

209 Collateral Sources

1. Compensation otherwise payable to a victim/claimant shall be diminished to the extent that the economic loss is or will be recouped from other sources, including collateral sources.

2. In determining the amount of an award, compensation shall be reduced by any collateral sources benefits available to the victim and/or claimant.

3. Collateral sources include, but are not limited to, Aid to Families with Dependent Children, Social Security Benefits, Supplemental Security Income, disability insurance, life insurance, burial insurance, Medicare, Medicaid, health insurance, Workers' Compensation, Veteran Benefits, restitution, civil recovery, prosecution resources, homeowners/renters insurance, automobile insurance, the Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund, donations and benevolence from family, friends and/or community-at-large.

4. Assets which shall not constitute collateral sources include, but are not limited to, a home, a car, bank accounts, credit available through banks or other financial institutions, income from parent or guardian when the victim is a minor, any other assets owned by the victim, sick or vacation/annual leave accrued at work and employee bereavement pay.

5. Exceptions to § 209(3):
   a. The first One Hundred Fifty Thousand Dollars ($150,000.00) of life insurance is not calculated as a collateral source.
   b. Life insurance is not calculated as a collateral source for mental health counseling and care expenses, bereavement wages, funeral travel, court related travel, execution travel,

crime scene clean-up, or repair and replacement expenses.

6. Compensation otherwise payable to a claimant shall be denied or reduced to the extent that it is reasonable, if the claimant failed to fully pursue benefits under a collateral source or otherwise failed to provide requested information to a source of benefits that would have been available to the claimant and that would have reimbursed the claimant for all or a portion of an eligible expense.

7. The Victims of Crime Act (VOCA) defines compensation programs as payer of last resort. All federal benefit programs, including Medicaid, Veterans Administration, CHAMPUS and Indian Health Service, must provide benefits prior to compensation. (42 U. S. C. 10602, §1403 of VOCA.)

8. Counselors who are funded in whole or used as match funds for federal, state or local grant funds shall not be eligible for compensation payments.

210 Burden of Proof

1. There must be evidence to support that a crime occurred. It is not necessary that the offender be prosecuted or convicted to show that a crime occurred. Additionally, although a conviction is not required as conclusive evidence that a crime has been committed, the victim/claimant must fully cooperate with law enforcement agencies and prosecuting attorneys.

2. Victims/claimants filing applications have the burden of proving eligibility of the claim filed and all its elements and items of compensation. Burden of proof is met by a preponderance of credible evidence.
3. The Division may give substantial weight to conclusions of investigative law enforcement agencies and dispositions of criminal proceedings, including, but not limited to, pleas of guilt and jury verdicts, considered along with all other case information and evidence. The ultimate determination made on a claim application is the obligation of the Division uncontrolled by determinations of others.

Chapter 03 Eligible Expenses

300 Eligible Expenses

1. All eligible expenses shall be verified and substantiated by supporting documentation.

2. Eligible expenses:
   a. Medical - reasonable charges incurred for reasonably needed and medically necessary products, services and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.
   b. Mental Health Services - reasonable charges incurred for reasonably needed mental health counseling and care for the victim/claimant and the victim's/claimant's family members.
   c. Medical/Mental Health Counseling (MHC) Transportation costs - reasonable non-emergency transportation services for (1) victim to attend doctor appointments and/or mental health counseling sessions; and (2) claimant and/or victim's family member(s) to attend appointments for mental health counseling and care.
   d. Funeral - reasonable charges incurred for usual and customary expenses related to funeral, cremation or burial services and products.
   e. Funeral Transportation Costs - reasonable charges for claimant(s) to make arrangements and/or attend services.
   f. Lost Wages – victim's or claimant's lost wages for work missed during the victim's recovery of crime related injuries; victim's or claimant's lost wages for work missed to attend criminal proceedings; and claimant's lost wages to make funeral arrangements and/or attend services.
   g. Loss of Support - economic loss of a dependent of a deceased victim.
   h. Temporary Housing - reasonable costs for temporary housing for domestic violence victims in imminent danger.
   i. Relocation Assistance - reasonable relocation costs for domestic violence victims in imminent danger.
   j. Crime Scene Cleanup - reasonable and necessary cost of cleaning the crime scene after a homicide or assault.
   k. Court Related Transportation - reasonable charges for attendance at criminal proceedings.
   l. Repair and/or Replacement Costs - reasonable costs for victim/claimant to repair and/or replace exterior broken windows, doors, locks or other security devices of a residential dwelling damaged and/or destroyed during a violent crime.
   m. Execution Travel - Reasonable and necessary costs for a claimant(s) to travel to and from a place of execution.
   n. Tuition Loss – Tuition reimbursement for a victim/claimant enrolled as a student at a school, college or university who, due to the victim's death or disability caused by a violent crime was unable to complete the semester or term.

3. Crime Scene Cleanup, Court Related Transportation, Repair and/or Replacement Costs and Execution Travel will be considered for claims previously approved with crimes occurring prior to July 1, 2007. A former grant was the payment source for these benefits. This grant was managed by the Victim Compensation Division; however, the grant is no longer

available.

4. Other crime related costs may be considered. See § 313.

5. Compensation may not exceed Twenty Thousand Dollars ($20,000.00) in the aggregate. Additional limits apply; see below § 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312 and 313.

301 Medical Expenses

1. Some examples of medical expenses include, but are not limited to, hospital, physicians, prescriptions, ambulance, prosthetics, medically necessary equipment, rehabilitation, medical supplies, dental and chiropractic services. Expenses may also include rehabilitative occupational services, including treatment for the purpose of training or retraining for employment based on the victim's medical and employment history.

   Other limitations do apply and are discussed further in this chapter.

2. Verification: Supporting documentation as determined by the Division shall be submitted to verify and substantiate the expense eligibility. The following shall apply:
   a. The victim/claimant shall provide an itemized statement indicating date of service, type of service, diagnostic code, treatment code and charge for each service, product or treatment.
   b. The victim/claimant shall provide collateral source information.
   c. Additional information and supporting documentation may be requested for further determination on an as-needed basis.

3. Dental care - dental care and services may be eligible if treatment is directly related to the crime injury. Expenses for routine dental checkup, cleaning or pre-existing conditions are not eligible.

4. Medically necessary equipment - may be eligible if the item became necessary as a direct result of the injury, is prescribed by the victim's physician and is necessary to facilitate the victim's physical recovery. Equipment includes, but is not limited to, wheelchair, bed, walker and crutches.

5. Medical supplies - supplies not prescribed by a physician may be eligible if medically necessary for victim's physical recovery and costs are supported with an itemized receipt that clearly indicates the item. Medical supplies include, but are not limited to, over-the-counter medications and bandages.

6. Prosthetic devices, eyeglasses, hearing aids and dentures - may be eligible if the item(s) was destroyed during the crime or became necessary as a direct result of the crime injury and is prescribed by the victim's physician.

7. Medical/MHC Transportation for non-emergency services - transportation for non-emergency services may be eligible. The following shall apply:
   a. Transportation costs shall be limited for (1) victim to attend doctor appointments and/or mental health counseling sessions; and (2) claimant and/or victim's family member(s) to attend appointments for mental health counseling and care.
   b. Needed medical attention and/or mental health counseling is not available in the victim's/claimant's community.
   c. Travel to a medical or mental health counseling facility is at least forty-five (45) miles, one way from the victim's/claimant's residence.
   d. Award for transportation costs shall be limited to mileage and bus, train, and air fare.
   e. Award for mileage shall be reimbursed at thirty five-cents (.35) per mile.
   f. If there is more than one (1) claimant per request for transportation costs, the amount of compensation shall be prorated among the claimants and the total amount of the award may not exceed Five Hundred Dollars ($500.00).
   g. The victim/claimant shall submit a copy of the bill substantiating office visit and date of travel.
   h. The victim/claimant shall submit a travel reimbursement request form as prescribed by the Division.
   i. Overall maximum amount allowable for travel reimbursement may not exceed $500.00.

8. In-patient mental health services and hospitalization - these expenses are considered mental health expenses. See § 302 below for guidelines and limitations.

9. Sexual Assault/Rape Exams – Authorized expenses for the medical examination conducted for the procurement of evidence will be paid directly to the medical provider/facility conducting the sexual assault medical forensic examination. Treatment provided for crime related injuries may be considered for payment if the claim is otherwise eligible for victim compensation. For the purposes of this chapter, the following shall apply:
   a. Sexual Assault Forensic Medical Examination – sexual assault medical forensic examination expenses include, but are not limited to: rape kit, authorized medical personnel fees, emergency room fees, venipuncture services and lab tests conducted (sexually transmitted disease tests, pregnancy tests, etc.). Costs such as emergency room fees and physician fees will be prorated.
   b. Medications - medications, as part of the examination, will be considered for payment if the claim is otherwise eligible.
   c. Future Medical Expenses - medications and subsequent tests, administered after the date of the initial medical examination, may be considered for payment if the claim is

otherwise eligible.

d. Personal Injuries Sustained During the Sexual Assault - medical services provided during the medical examination for treatment of crime related injuries may be considered for payment through victim compensation if the claim is otherwise eligible.
e. Other treatment, services and/or expenses as a part of the sexual assault medical forensic examination not previously mentioned above will be considered on a case-by-case basis.
f. See § 600-605 for comprehensive guidelines for payment of sexual assault medical forensic examinations including payment limitations.

10. Health Insurance Premiums - the victim's health insurance premium may be eligible for payment if the victim was covered at the time of the crime. The following shall apply:
    a. The victim is unable to return to work due to crime related injuries.
    b. Premiums paid by someone other than the victim or the victim's employer will not be considered.
    c. If the premium includes additional individuals or family members, only the victim's portion is eligible.
    d. The victim or claimant shall provide verification of the health insurance coverage and monthly premium payment amount.
    e. Payment of health insurance premiums shall be limited to the disability duration or up to twelve months, which ever occurs first and shall be based upon a reasonable charge as determined by the Division of Victim Compensation.
    f. The victim or claimant shall provide a disability statement from the victim's attending licensed medical doctor or doctor of osteopathy licensed to practice medicine (See Exception in § 301 [10] [g]) indicating the duration of the victim's disability.
    g. The disability statement shall be signed by a licensed medical doctor or doctor of osteopathy licensed to practice medicine. Disability statements signed by any other provider, such as therapist, shall not be accepted for consideration. Exception: Victim/Claimant may submit a Statement of Disability Report form completed and signed by an (certified) advanced practice registered nurse in lieu of a licensed medical doctor or doctor of osteopathy licensed to practice medicine. If the disability period appears to be unreasonable, then the victim/claimant will be required to have a licensed medical doctor or doctor of osteopathy licensed to practice medicine complete the form. This will be determined on a case-by-case basis.

11. Limitations for medical expenses include, but are not limited to the following:
    a. Compensation for medical expenses may not exceed Fifteen Thousand Dollars ($15,000.00).
    b. For victims who have a pre-existing condition(s) and the crime related injuries have exacerbated the pre-existing condition(s), expenses will be paid at the following rates: 1st three months (from date of crime) reimbursed at 100%; 2nd three months reimbursed at 50%. Thereafter, expenses are not eligible for reimbursement unless the

attending medical doctor or doctor of osteopathy licensed to practice medicine (see § 301 [10] [g] for exception) can verify continued crime related injuries exacerbation of a pre-existing condition(s).

c. Expenses for treatment which is not directly related to crime injuries and/or provided by a non-licensed medical professional or facility (if applicable) shall not be eligible.
d. The medical expenses of a deceased victim shall not be eligible if the claimant does not have legal obligation or liability of losses incurred by the victim. However, the expenses may be eligible, if the claimant signed for financial responsibility of the expenses or made voluntary payments.
e. Medical Transportation – Claimant travel to visit victim in hospital/other facility or sit with victim in hospital/other facility is not eligible.
f. Medical and Mental Health Counseling transportation have a combined cap of Five Hundred Dollars ($500.00). This amount is in addition to the Fifteen Thousand Dollars ($15,000.00) Medical maximum or Three Thousand Five Hundred Dollars ($3,500.00) Mental Health Counseling maximum.

302 Mental Health Counseling and Care

1. Victim/Claimant Eligibility:
   a. The victim/claimant must otherwise qualify for compensation before any award can be considered;
   b. The victim/claimant must have suffered personal injury or psychological trauma as a direct result of the criminally injurious conduct; and,
   c. Counseling must be causally related to the crime and focus must be for treatment to assist in the victim's/claimant's recovery.
   d. An individual who witnesses a violent crime and suffers psychological trauma may receive mental health benefits.

2. Family Member Eligibility:
   a. The victim/claimant must otherwise qualify for compensation before any award can be considered;
   b. The victim/claimant must have suffered death, personal injury or psychological trauma as a direct result of the criminally injurious conduct; and
   c. Counseling must be causally related to the crime and focus must be for treatment to assist in the recovery of the victim's family member.

3. Verification: Supporting documentation as determined by the Division shall be submitted to verify and substantiate the expense eligibility. In order for the victim, claimant, or mental health provider to receive reimbursement for services, the following shall apply:
   a. The victim/claimant shall provide an itemized bill, on provider letterhead, indicating date(s) of service, procedure code(s), and charge for each session.

b. The mental health provider shall provide a completed Mental Health Services and Expenses Report form to include: the presenting problem/complaint; assurance that the therapy is directly related to the crime; a treatment statement summary for dates of service, a legible copy of their professional license or certification (Advanced Practice Registered Nurse). The mental health provider shall also submit a (current) itemized bill detailing date(s) of service, procedure code(s), charge for each session, and source and amount of any payments received by the mental health provider.
c. The mental health provider must submit a completed W-9 Form/Request for Taxpayer Identification Number and Certification Form if one is not already on file. Additional documentation may be required as needed by the Mississippi Department of Finance and Administration.
d. The victim/claimant shall provide collateral source information.
e. Additional information and supporting documentation may be required from the mental health provider on an as-needed basis for further determination of expense eligibility.

4. Mental health services and limitations:
   a. Compensation for mental health counseling and care for the victim/claimant and the victim's family members may not exceed Three Thousand Five Hundred Dollars ($3,500.00); provided, however, if there is more than one (1) family member per victim, the amount of compensation awarded shall be prorated among the family members not to exceed Three Thousand Five Hundred Dollars ($3,500.00).
   b. Treatment must follow an accepted modality for the treatment of crime victims as determined by the Division of Victim Compensation.
   c. If treatment addresses issues not directly related to the crime, then only that percentage of treatment which addressed the victimization shall be compensated.
   d. Expenses for intake services (initial session – CPT code 90801) will be reimbursed at the following rates: Master Level Clinicians: One Hundred Dollars ($100.00); Ph.D.: One Hundred Twenty Five Dollars ($125.00); M.D.: One Hundred Fifty Dollars ($150.00).
   e. Expenses for evaluation and testing may not exceed One Hundred Fifty Dollars ($150.00). Exception: Expenses for evaluation and testing that exceed $150.00 will be considered on a case-by-case basis. If evaluation and testing expenses over $150.00 are determined reasonable and necessary, compensation for evaluation and testing then may not exceed Four Hundred Fifty Dollars ($450.00).
   f. Allowable expenses for individual counseling sessions are based upon applicable licensure and/or certification requirements of the therapist/counselor, see § 302 (7).
   g. Family counseling sessions are eligible only if the victim/claimant is present in the session and the focus is to assist in the victim/claimant's recovery. Allowable expenses for family counseling sessions are based upon applicable licensure and/or certification requirements of the therapist/counselor, see § 302 (7). Exception: Parents/guardians of the victim may be seen for child-related content (inclusive of information about the child's condition, treatment, and concerns).

h. Expenses for group sessions may not exceed $40.00 per session.
i. Case management or staff conferences may not exceed $20.00 per session, per month.
j. Medication management and evaluation sessions may not exceed $40.00 per 15-20 minute session.
k. Medical and Mental Health Counseling transportation have a combined cap of Five Hundred Dollars ($500.00). This amount is in addition to the Fifteen Thousand Dollars ($15,000.00) Medical maximum or Three Thousand Five Hundred Dollars ($3,500.00) Mental Health Counseling maximum.

5. Additional limitations and verification:
   a. Sliding scale fees are to be based on the victim/claimant's or family member's income and only that portion will be eligible for compensation.
   b. Counselors who are funded in whole or used as match funds for federal, state or local grant funds shall not be eligible for compensation payments, see § 209 (8).
   c. Additional information and supporting documentation may be required from the mental health provider on an as needed basis for further determination of expense eligibility.

6. Ineligible expenses:
   a. Preparation of reports and court support time;
   b. Expenses for missed or canceled appointments;
   c. Treatment for pre-existing physical or emotional conditions, unless the crime related trauma has exacerbated the pre-existing condition(s), expenses will be paid at the following rates: 1st three months (from date of crime) reimbursed at 100%; 2nd three months reimbursed at 50%. Thereafter, expenses are not eligible for reimbursement unless a qualified mental health provider (See § 302 [7]) can verify continued crime related trauma exacerbation of a pre-existing condition(s). A medical doctor or doctor of osteopathy licensed to practice medicine (see medical personnel exception in § 301 [10] [g]) may also be required to verify continued crime related trauma exacerbation of a pre-existing condition(s).
   d. Services and/or products provided at no cost to the victim/claimant or family member; and,
   e. Sessions in which the offender is present.

7. Qualified Mental Health Providers and Fee Schedule:
   a. Mental health providers must meet or exceed the applicable licensure and/or certification requirements of Mississippi and expenses are awarded at the following rates, for the standard hourly individual or family session:
      1. Licensed Psychiatrist, (M.D.)..... $120.00

      2. Licensed Psychologist (Ph.D.).....$100.00

3. Licensed Certified Social Worker:
   (LCSW)..... $ 80.00
   (Ph.D.)..... $100.00

4. Licensed Master Social Worker (LMSW).....$ 60.00

5. Licensed Professional Counselor:
   (Master Level)..... $ 80.00

   (Ph.D. Level) $100.00

6. Licensed Marital and Family Therapist (LMFT)..... $ 80.00

7. Licensed Art Therapist (LPAT) ..... $ 80.00

8. Advanced Practice Registered Nurse – Psychiatric/
   Mental Health Licensure..... $ 80.00

b. Providers whose credentials are not recognized in the above are not eligible as a qualified mental health provider.
c. Mental health providers not licensed in Mississippi, *may* be considered as qualified providers in certain circumstances. Those individuals shall be supervised by a qualified mental health professional as listed above. The non-licensed provider must submit formal documentation indicating that supervision was provided and/or supervisory conferences were held. The Division will determine on a case-by-case basis whether the provider will be considered as a qualified mental health provider. If the non-licensed mental health provider meets these requirements, the fee schedule will be fifty percent (50%) less than the supervising qualified mental health provider.
d. Mental health providers not practicing in Mississippi must meet or exceed those qualifications of licensure requirements of Mississippi.
e. Individuals providing services through a student internship or other academic requirements are not eligible as a qualified mental health provider.
f. See § 302 (4) (d) for initial session (CPT code 90801) fee schedule.

8. Other mental health care benefits:
   a. In-patient mental health services for the victim/claimant or the victim/claimant's family members are considered as mental health counseling and care expenses and the maximum of Three Thousand Five Hundred Dollars ($3,500.00) shall be applied.
   b. Expenses incurred by victim/claimants and/or family members receiving medical attention for anxiety, depression and other related conditions, including medications, are considered mental health care expenses and the maximum of Three Thousand Five Hundred Dollars ($3,500.00) shall be applied.

303 Lost Wages

1. Eligible expenses:
   a. Lost wages may be eligible for work missed by the victim during recovery of physical injuries and/or psychological trauma, herein known as victim lost wages.
   b. Lost wages may be eligible for work missed by the claimant during the victim's recovery of physical injuries and/or psychological trauma, herein known as claimant lost wages.
   c. Lost wages may be eligible for work missed by the victim or claimant to attend criminal proceedings of the case which the claim is based, herein known as court related lost wages.
   d. Lost wages may be eligible for work missed by the claimant to make funeral arrangements, attend services and for bereavement, herein known as bereavement lost wages.

   Other limitations do apply and are discussed further in this chapter.

2. Victim eligibility:
   a. The victim must otherwise qualify for compensation before any award can be considered.
   b. Wage loss for the victim shall be limited to:
      i. cases in which the victim had a loss of earnings during recovery of physical injuries and/or psychological trauma, attended medical appointments and/or attended mental health counseling sessions; and
      ii. cases in which the victim had a loss of earnings to attend criminal proceedings.
   c. The victim must provide all requested supporting documentation.

3. Claimant eligibility:
   a. The victim/claimant must otherwise qualify for compensation before any award can be considered;
   b. Wage loss for the claimant shall be limited to:
      i. cases in which the claimant had a loss of earnings in order to assist victim during the victim's recovery of physical injuries, accompanied victim to mental health counseling sessions and/or accompanied victim to medical appointments;
      ii. cases in which the claimant had a loss of earnings to attend criminal proceedings; and
      iii. cases in which the claimant had a loss of earnings to make funeral arrangements, attend the services and/or for bereavement time.
   c. The victim/claimant must provide all requested supporting documentation.

4. Verification: Supporting documentation as determined by the Division shall be submitted

to verify and substantiate the expense eligibility. The following shall apply:

a. The victim and/or claimant shall provide report of earnings and collateral source information.
b. If loss of work due to victim's physical injuries and/or psychological trauma is longer than one work week, the victim or claimant shall provide a disability statement from the victim's attending licensed medical doctor or doctor of osteopathy licensed to practice medicine (See Exception in § 303 [4] [c]) indicating the duration of the victim's disability.
c. The disability statement shall be signed by a licensed medical doctor or doctor of osteopathy licensed to practice medicine. Disability statements signed by any other provider, such as therapists, shall not be accepted for consideration. Exception: Victim/Claimant may submit a Statement of Disability Report form completed and signed by a (certified) advanced practice registered nurse in lieu of a licensed medical doctor or doctor of osteopathy licensed to practice medicine. If the disability period appears to be unreasonable, then the victim/claimant will be required to have a licensed medical doctor or doctor of osteopathy licensed to practice medicine complete the form. This will be determined on a case-by-case basis.
d. The disability statement may not be required if there was a loss of work for the victim to attend medical appointments and/or mental health counseling sessions. These claims will be determined on a case-by-case basis.
e. If the victim or claimant is self-employed, the victim or claimant shall provide documentation of wage loss. The victim's or claimant's federal income tax return for the year prior to the crime or the year in which the crime occurred is required. In addition, the victim and/or claimant must also verify work missed by signing a loss of work affirmation.
f. If the wages are based upon variable earnings, the victim or claimant shall provide documentation as determined by the Division to substantiate continuous employment and earnings information. Estimated earnings not supported by past employment information or earnings statements shall not be eligible. Employment with variable earnings includes, but not limited to: seasonal work, part-time work or work with payment of sales commissions.
g. If the victim or claimant is paid in cash, the victim or claimant must submit a federal income tax return for the year prior to the crime and/or the year in which the crime occurred in order to substantiate wages. If the victim or claimant failed to file income taxes with the Internal Revenue Service or state of residency as required by law, then lost wages shall be denied.
h. If the victim or claimant fails to provide a copy of a federal income tax return as requested, the lost wages shall be denied.
i. Lost wages to attend criminal proceedings shall be verified by the appropriate law enforcement agency, court official or district attorney's office.
j. Additional information and supporting documentation may be requested for further determination on an as-needed basis.

5. Limitations: The following shall apply:
   a. Victim must have been employed or receiving unemployment or Workers' Compensation benefits, at time of the crime.
   b. Claimant must have been employed at time of the crime.
   c. The amount of the award shall be based on the victim's/claimant's average gross income and reduced by estimated taxes and any available collateral sources. The average gross income is based on income for the 12 weeks prior to the crime, if 12 weeks of income information is available. (If the victim/claimant had worked less than 12 weeks prior to the crime, the available supporting documentation for the number of weeks worked will be used to calculate lost wages.) The award is calculated by using the average gross income minus estimated taxes of 15% or 20%. If the victim's/claimant's gross annual income was less than $25,000.00, a tax reduction rate of 15% will be applied. If the victim's/claimant's gross annual income was more than $25,000.00, a tax reduction of 20% will be applied. The amount of the award will then be reduced by any available collateral sources such as disability insurance or Social Security.
   d. The amount of the award for a self-employed victim/claimant will be based on the victim's/claimant's gross income listed on the federal income tax return and reduced by estimated taxes and any available collateral sources. The award is calculated by using the gross income minus taxes of 15% or 20%. If the victim's/claimant's gross annual income was less than $25,000.00, a tax reduction rate of 15% will be applied. If the victim's/claimant's gross annual income was more than $25,000.00, a tax reduction rate of 20% will be applied. The amount of the award will then be reduced by any available collateral sources such as disability insurance or Social Security.
   e. The amount of the award shall be reduced by any income from substitute work actually performed by the victim or claimant.
   f. The amount of the award shall be reduced by income the victim or claimant would have earned if appropriate substitute work the victim or claimant was capable of performing was available, but the victim or claimant unreasonably failed to undertake.
   g. No anticipated work shall be considered for compensation, unless the victim or claimant had been hired by an employer and was unable to begin employment as a result of the crime related injuries. The victim or claimant shall verify that he or she was employed at the time of the crime, but the beginning employment date was after the date the crime occurred. Employment and the duration of disability must be verified in the same manner as above.
   h. Compensation for victim lost wages may not exceed 1) Six Hundred Dollars ($600.00) per week, 2) a total of fifty-two (52) weeks, and 3) the maximum available benefit amount allowed.
   i. Compensation for claimant lost wages may not exceed 1) Six Hundred Dollars ($600.00) per week, 2) a total of fifty-two (52) weeks; and 3) the maximum available benefit amount allowed.
   j. Compensation for court related lost wages to attend criminal proceedings may not

exceed Six Hundred Dollars ($600.00) per week, not to exceed one (1) week.

k. Compensation for court related lost wages will be determined on a case-by-case basis.
l. Compensation for bereavement lost wages may not exceed Six Hundred Dollars ($600.00) per week, not to exceed one (1) week.
m. Bereavement lost wages will be determined on a case-by-case basis.
n. If there is more than one (1) claimant per request for bereavement lost wages, the amount of compensation shall be prorated among the claimants and the total amount of the award may not exceed Six Hundred Dollars ($600.00).
o. The total amount for victim or claimant lost wages may not exceed the aggregate limitation of Twenty Thousand Dollars ($20,000.00).
p. The victim and/or claimant may both receive compensation for lost wages during the victim's recovery of crime related injuries and/or to attend criminal proceedings. The amount of compensation shall be prorated among the victim and claimant and the total amount of the award may not exceed 1) Six Hundred Dollars ($600.00) per week, 2) a total of 52 weeks, and 3) the maximum available benefit amount allowed.
q. The Division will evaluate each request for lost wages on a case-by-case basis to determine reasonableness and duration of work loss.
r. Payment may be provided in a lump sum, but any payment for future economic loss may not exceed One Thousand Dollars ($1,000.00) and may be made only for a period as to which future economic loss can reasonably be determined.
s. An award for future economic loss may be modified upon findings that a material and substantial change of circumstances has occurred.
t. If any victim and/or claimant is in arrears for child support and a court order is in effect to retrieve child support payments from the victim and/or claimant, the Mississippi Department of Human Services will determine the amount owed by the victim and/or claimant for child support to be deducted from any lost wages owed the victim and/or claimant and that amount will be submitted to the Mississippi Department of Human Services for appropriate distribution.
u. Lost wages for work missed by a claimant (who is not the victim) to recover from his/her (the claimant's) mental/physical health issues relating to the crime (on which the claim is based) are not eligible for payment.

304 <u>Loss of Support for Dependent(s)</u>

1. Surviving dependent(s) of the deceased victim may be eligible to receive loss of support. Dependent may be a spouse or a child under the age of 18 (if the child is enrolled in school full-time on the date of the crime, then no later than the child's 21st birthday). Other family members in the household may be considered on a case-by-case basis. See § 304 (4) (f). Other limitations do apply and are discussed further in this chapter.

2. Claimant and Dependent Eligibility:
   a. The victim must otherwise qualify for compensation before any award can be considered;
   b. The claimant must otherwise qualify for compensation before any award can be considered;
   c. The dependent must otherwise qualify for compensation and was wholly or partially dependent upon the victim for care and support at the time of the victim's death; and,
   d. The claimant must provide all requested supporting documentation.

3. Verification: Supporting documentation as determined by the Division shall be submitted to verify and substantiate the expense eligibility. The following shall apply:
   a. The claimant shall provide a report of the victim's earnings and available collateral information.
   b. The claimant shall provide verification that the dependent was wholly or partially dependent upon the victim for care and support at the time of the victim's death.
   c. The claimant shall provide verification that he or she is legally authorized to act on behalf of victim's dependent.
   d. Additional information and supporting documentation may be requested for further determination on an as-needed basis.

4. Limitations: The following shall apply:
   a. Compensation for dependent's loss of support may not exceed Six Hundred Dollars ($600.00) per week, not to exceed fifty-two (52) weeks; provided, however, if there is more than one (1) dependent per victim, the amount of compensation awarded shall be prorated among the dependents.
   b. The total amount for loss of support may not exceed the aggregate limitation of Twenty Thousand Dollars ($20,000.00).
   c. The amount of loss is based on the victim's income at the time of death. The income is determined by utilizing rules of wage loss in § 303.
   d. All relevant collateral sources will be considered and shall be reduced from the eligible award. (See § 209)
   e. The first One Hundred Fifty Thousand Dollars ($150,000.00) of life insurance may not be considered as a collateral source. Any amount more than One Hundred Fifty Thousand Dollars ($150,000.00) shall be deducted from the eligible award.
   f. The Division will evaluate each request for loss of support on a case-by-case basis to determine reasonableness and relationships of victim, dependent and claimant. See § 304 (1).
   g. Payment may be provided in a lump sum, but any payment for future economic loss may not exceed One Thousand Dollars ($1,000.00) and may be made only for a period as to which future economic loss can reasonably be determined.
   h. An award for future economic loss may be modified upon findings that a material and substantial change of circumstances has occurred.

305 Funeral

1. Eligible Expenses:
   a. Reasonable charges for usual and customary expenses related to funeral, cremation or burial services and products include, but not limited to: funeral home professional and staff services, embalming, viewing facilities, wake facilities, equipment for grave side, newspaper announcements, transfer and transportation costs of deceased, casket, burial container, clothing for deceased, programs, register book, flowers, monument, cemetery plot, opening/closing of the grave, and death certificates, not to exceed Six Thousand Five Hundred Dollars ($6,500.00); and
   b. Necessary and reasonable transportation costs to make arrangements and/or attend funeral services, not to exceed Eight Hundred Dollars ($800.00). Other limitations do apply and are discussed further in this chapter.

2. Victim and Claimant Eligibility:
   a. Victim must otherwise qualify for compensation before any award can be considered.
   b. Claimant or responsible party must otherwise qualify for compensation before any award can be considered.

3. Verification: Supporting documentation as determined by the Division shall be submitted to verify and substantiate the expense eligibility. The following shall apply:
   a. The claimant or responsible party shall provide expense and collateral source information.
   b. The claimant or responsible party shall provide appropriate documentation indicating the responsible party for the funeral expenses.
   c. Additional information and supporting documentation may be requested for further determination on an as-needed basis.

4. Limitations: The following shall apply:
   a. Compensation for eligible funeral expenses may not exceed a total of Six Thousand Five Hundred Dollars ($6,500.00).
   b. Compensation for transportation costs to make arrangements and/or to attend funeral services may not exceed Eight Hundred Dollars ($800.00).
   c. Total benefits for funeral and transportation may not exceed Seven Thousand Three Hundred Dollars ($7,300.00).
   d. Award for clothing for the victim may not exceed Three Hundred Dollars ($300.00).
   e. Award for flowers may not exceed Two Hundred Fifty Dollars ($250.00).
   f. Award for a headstone and/or monument may not exceed Eight Hundred Fifty Dollars ($850.00).
   g. Award for printing costs associated with funeral expenses may not exceed Two Hundred Dollars ($200.00). Examples include but not limited to: printing of funeral programs, acknowledgment cards, thank you cards, newspaper notice, obituaries,

memorial cards, and/or other relevant documents.

h. Transportation to arrange or attend services shall be at least forty-five (45) miles, one way from the claimant's residence.
i. Award for transportation costs shall be limited to mileage and bus, train and air fare.
j. Award for transportation costs shall be reimbursed at thirty-five cents (.35) per mile. If there is more than one (1) claimant per request for transportation costs, the amount of compensation shall be prorated among the claimants and the total amount of the award may not exceed Eight Hundred Dollars ($800.00).
k. Social Security Death Benefits, memorials, benevolent funds, donations and burial insurance are considered as collateral sources and shall be reduced from the award.
l. The Division will evaluate each request on a case-by-case basis to determine reasonableness of charges incurred for usual and customary expenses for funeral, cremation or burial services and products; and transportation costs.
m. If multiple eligible claimants do not submit specific amounts paid (by each claimant) for products or services purchased, an equal amount will be reimbursed among all eligible claimants.

5. Ineligible funeral expenses:
   a. Clothing for the victim's family members or dependents is not eligible.
   b. Building rental, food or other items associated with a repast are not eligible.

306 Temporary Housing Assistance

1. Upon referral and certification by a law enforcement officer, prosecutor, judicial officer, or certified/regulated domestic violence shelter director or representative from said agency or entity, temporary housing assistance may be available for domestic violence victims who have an immediate need for temporary housing assistance in order to escape from a domestic violence environment if it is determined that the victim is in imminent danger.

2. For the purposes of this rule, domestic violence shall mean the following acts:
   a. Simple or aggravated assault as defined in Section 97-3-7 of the Mississippi Code;
   b. Sexual battery as defined in Section 97-3-95 of the Mississippi Code;
   c. Rape as defined in Section 97-3-65 of the Mississippi Code;
   d. Stalking as defined in Section 97-3-107 of the Mississippi Code ;
   e. Kidnapping as defined in Section 97-3-53 of the Mississippi Code; or
   f. Cyberstalking as defined in Section 97-45-15 of the Mississippi Code

   provided that these acts have occurred between current or former spouses, persons living as spouses or who formerly lived as spouses, family members related by blood or marriage who reside with each other or who formerly resided with each other, persons with a child in common, or persons in a current or former dating relationship.

3. The following factors will be considered to determine if "imminent danger" exists:
   a. The nature of the crime;
   b. The amount of danger the offender poses to the victim and/or the victim's family.
   c. Prior acts or threats by the offender;
   d. The level of the threat or action that may create the "imminent danger";
   e. Any other relevant factors, including, but not limited to, whether an order of protection or restraining order exists, or the opinion(s) of the investigating law enforcement agency or the prosecuting attorney.

4. Temporary housing assistance expenses considered for payment include the following: personal vehicle mileage (.35 per mile), lodging (hotel/motel) not to exceed $80.00 per day, and meal expenses not to exceed $30.00 per day. If more than one eligible person is temporarily housed, meal expenses may not exceed $50.00 per day in the aggregate. Justification for temporary housing assistance expenses other than those listed above must be submitted, in writing, as being necessary. These expenses will be considered on a case-by-case basis.

5. In order for an award to be granted to a victim for temporary housing:
   a. The victim must be referred and their need certified by the appropriate agency or entity as stated in § 306 (1). If the referring and certifying agency/entity is a domestic violence shelter, the shelter must be certified by the Mississippi Coalition Against Domestic Violence or regulated by the Mississippi Department of Health (MDH). Exception: If the victim goes to a shelter in a surrounding state, the request for assistance will be considered if the domestic violence shelter is certified/regulated by an authorized entity in that state. Each of these requests will be considered on a case by case basis;
   b. The domestic violence offense must have been reported to law enforcement as required in § 202 and there must be evidence to support the commission of a violent crime;
   c. Officials must assert that the victim is cooperating with law enforcement and other officials in the investigation and prosecution of the offender. This requirement may be waived if there is compelling health or safety reasons that would jeopardize the well being of the victim/claimant. See § 207 (4);
   d. The victim must be deemed in imminent danger. See § 102 (8) and § 306 (3);
   e. Documentation that the victim has developed a safety plan must be submitted by appropriate official(s); and
   f. In addition, any other requirements/limitations as discussed further in this chapter must be met/apply.

6. The victim has the ultimate responsibility for providing the following information and documentation to support eligibility and benefit payment:
   a. Victim Compensation application;
   b. Domestic Violence Temporary Housing Certification form, completed and signed by the

referring/certifying agency/entity representative as specified in § 306 (1);

c. Domestic Violence Temporary Housing Victim Affirmation form completed and signed by the victim and the referring/certifying agency/entity representative as specified in § 306 (1); and

d. Temporary Housing expense receipts and other supporting documentation as needed.

7. By signing the Temporary Housing Victim Affirmation form, the victim affirms:
   a. That she or he and the offender are not residing together and she or he does not intend to reside with the offender in the future; and
   b. That she or he will cooperate with all phases of involvement with law enforcement officials and prosecution officials (see § 306 [5] [c] for exception).

8. The victim/claimant must otherwise qualify for Victim Compensation before any award can be considered.

9. Upon receipt of the Victim Compensation claim application, Division staff will request law enforcement information from the appropriate law enforcement agency.

10. All expenses must be verified by supporting documentation. Documentation includes, but is not limited to, itemized bills and receipts.

11. Additional information and supporting documentation may be required on an as needed basis for further determination of expense eligibility.

12. Limitations for temporary housing assistance include, but are not limited to, the following:
    a. Compensation for temporary housing assistance may not exceed Five Hundred Dollars $500.00).
    b. A second claim request for temporary housing assistance benefits will not be paid.
    c. Expenses for family members, friends, or acquaintances associated with the victim's move will not be paid. An exception may be made for mileage expenses. Mileage expenses will be considered on a case by case basis; these expenses must be reasonable and necessary as determined at the discretion of the Director.
    d. Travel to the temporary housing location must be at least forty-five (45) miles one way, from the victim's/claimant's residence, to receive mileage reimbursement.
    e. Expenses for personal time (lost wages) for packing and moving will not be paid.
    f. Temporary housing assistance benefits will only be considered for approval when other temporary housing assistance (i.e. domestic violence shelter) has been sought, but for circumstances beyond the control of the victim and the referring domestic violence shelter (or other agency/entity), other temporary housing is not available.
    g. Due or overdue utility expenses for a residence the victim is leaving to move to temporary housing are not eligible for reimbursement.

307 Relocation Assistance

1. Upon referral and certification by a certified/regulated domestic violence shelter director or representative from said agency or entity, relocation assistance may be available for domestic violence victims who have an immediate need for relocation assistance in order to escape from a domestic violence environment if it is determined that the victim is in imminent danger.

2. For the purposes of this rule, domestic violence shall mean the following acts:
   a. Simple or aggravated assault as defined in Section 97-3-7 of the Mississippi Code;
   b. Sexual battery as defined in Section 97-3-95 of the Mississippi Code;
   c. Rape as defined in Section 97-3-65 of the Mississippi Code;
   d. Stalking as defined in Section 97-3-107 of the Mississippi Code;
   e. Kidnapping as defined in Section 97-3-53 of the Mississippi Code; or
   f. Cyberstalking as defined in Section 97-45-15 of the Mississippi Code

   provided that these acts have occurred between current or former spouses, persons living as spouses or who formerly lived as spouses, family members related by blood or marriage who reside with each other or who formerly resided with each other, persons with a child in common, or persons in a current or former dating relationship.

3. The following factors will be considered to determine if "imminent danger" exists:
   a. The nature of the crime;
   b. The amount of danger the offender poses to the victim and/or the victim's family.
   c. Prior acts or threats by the offender;
   d. The level of the threat or action that may create the "imminent danger";
   e. Any other relevant factors, including, but not limited to, whether an order of protection or restraining order exists, or the opinion(s) of the investigating law enforcement officer, the prosecuting attorney or representative for said agency or entity.

4. Relocation assistance expenses considered for payment include the following: rental deposit, rent for the first month, utilities deposit (electric/gas/water) and utilities (electric/gas/water) for the first month, telephone deposit (basic service and caller ID), telephone connection/activation fees, moving company fees, moving van rental fees, vehicle rental fees (car, truck, etc.), gasoline for rental vehicle, personal vehicle mileage (.35 per mile), long distance transportation (including bus, train, airfare), lodging (hotel/motel) while in transit not to exceed $80.00 per day, and meal expenses during relocation not to exceed $30.00 per day. If more than one eligible person is relocating, meal expenses may not exceed $50.00 per day in the aggregate. Justification for relocation assistance expenses other than those listed above must be submitted, in writing, as being necessary. These expenses will be considered on a case-by-case basis.

5. In order for an award to be granted to a victim for relocation assistance:
   a. The domestic violence offense must have been reported to law enforcement as required in § 202 and there must be evidence to support the commission of a violent crime;
   b. The victim must be referred and their need certified by a domestic violence shelter. The domestic violence shelter must be certified by the Mississippi Coalition Against Domestic Violence or regulated by the Mississippi Department of Health (MDH). Exception: If the victim goes to a shelter in a surrounding state, the request for assistance will be considered if the domestic violence shelter is certified/regulated by an authorized entity in that state. Each of these requests will be considered on a case by case basis;
   c. The domestic violence shelter must assert that the victim is cooperating with law enforcement officials and other officials in the investigation and prosecution of the offender. This requirement may be waived if there is compelling health or safety reasons that would jeopardize the well being of the victim/claimant. See § 207 (4);
   d. The victim must be deemed in imminent danger. See § 102 (8) and § 307 (3);
   e. Documentation from the domestic violence shelter must be submitted that indicates the victim has developed a safety plan; and
   f. In addition, any other requirements/limitations as discussed further in this chapter must be met/apply.

6. The victim has the ultimate responsibility for providing the following information and documentation to support eligibility and benefit payment:
   a. Victim Compensation application;
   b. Domestic Violence Relocation Certification form completed and signed by the referring/certifying agency/entity representative as specified in § 307 (1);
   c. Domestic Violence Relocation Victim Affirmation form completed and signed by the victim and the referring/certifying agency/entity representative as specified in § 307 (1);
   d. Lease/rental agreement copy (when applicable); and
   e. Relocation expense receipts and other supporting documentation as needed.

7. The victim/claimant must otherwise qualify for victim compensation before any award can be considered.

8. Upon receipt of the claim application, Division staff will request law enforcement information from appropriate law enforcement agency.

9. A protective order for domestic violence will not be accepted as proof of a domestic violence offense. In addition, a violation of the protective order will not be accepted as proof of a domestic violence offense, unless domestic violence occurred at the time of the protective order violation and is documented by a law enforcement offense report.

10. If the victim did not reside in an identifiable abode or was considered homeless or transient at the time of the victimization she or he will not be considered for relocation assistance. The

only exception is when the offense report clearly states the victim is residing in a structure designed for sleeping or housing. Such structures would include tents, boats, motor homes, campers, and hotels.

11. By signing the Relocation Assistance Victim Affirmation form, the victim certifies the following:
    a. That she or he and the offender are not residing together and she or he does not intend to reside with the offender in the future; and
    b. That she or he will cooperate with all phases of involvement with law enforcement officials and prosecution officials (see § 307 [5][c] for exception).

12. Additional information and supporting documentation may be required on an as needed basis for further determination of expense eligibility.

13. Limitations for relocation assistance include, but are not limited to the following:
    a. Relocation assistance benefits may not be used as a deposit to purchase a home.
    b. Compensation for relocation assistance may not exceed Two Thousand Dollars ($2,000.00).
    c. A second claim request for relocation assistance benefits will not be paid.
    d. Expenses for family members, friends, or acquaintances associated with the victim's move will not be paid. An exception may be made for mileage expenses. Mileage expenses will be considered on a case by case basis; these expenses must be reasonable and necessary as determined at the discretion of the Director.
    e. Travel to the relocation location must be at least forty-five (45) miles one way, from the victim's/claimant's residence, to receive mileage reimbursement.
    f. Expenses for personal time (lost wages) for packing and moving will not be paid.
    g. Relocation Assistance benefits will only be considered for approval when other relocation assistance (i.e. domestic violence shelter) has been sought, but for circumstances beyond the control of the victim and the referring domestic violence shelter, other relocation assistance is not available.
    h. Due or overdue utility expenses for a residence the victim is leaving to move to the "relocated" residence are not eligible for reimbursement.

308 <u>Crime Scene Cleanup</u>

1. Compensation may be awarded for reasonable and necessary out-of-pocket expenses incurred for cleaning supplies, equipment rental and labor needed to clean the scene of a homicide or assault and for which reimbursement from collateral sources is not available including, but not limited to, homeowners' insurance.

2. "Cleaning the scene" means to remove, or attempt to remove, from the crime scene, blood, dirt, stains or other debris caused by the crime.

3. The victim/claimant must otherwise qualify for compensation before any award can be

considered.

4. All expenses must be verified by supporting documentation and by signatures of the appropriate individual(s)/official(s). Documentation includes, but is not limited to, itemized bills and receipts.

5. All expenses must be evaluated to determine reasonableness of expenses and eligible award amount.

6. Additional information and supporting documentation may be requested for determination of expense eligibility.

7. Limitations for crime scene cleanup include, but are not limited to, the following:
   a. Compensation awarded for crime scene cleanup costs does not include replacement and/or repair expenses for personal property and furniture which has been rendered damaged or useless as a result of the crime or the collection of evidence for purposes of investigating the crime.
   b. Crime scene cleanup benefit does not include places of employment, public access or other premises in which the cleanup costs are not the financial responsibility of the victim/claimant.
   c. Crime scene cleanup services compensated may only be performed by a professional cleaning service agency or service which specializes in crime scene cleanup. Exceptions will be considered on a case-by-case basis.
   d. Claims seeking exclusively reimbursement for crime scene cleanup may only be awarded through an eligible victim compensation claim filed with this Division by, or on behalf of, the direct victim. Claims exclusively seeking reimbursement for crime scene cleanup will not be eligible for an award of compensation, but may be merged with and compensated through an eligible claim as described in this paragraph.
   e. Compensation for crime scene cleanup may not exceed One Thousand Dollars ($1,000.00).

309 Court Related Travel

1. Compensation may be awarded for the reasonable and necessary travel costs for attendance at criminal justice proceedings.

2. Criminal justice proceedings are defined as investigative or court proceedings for the criminal case upon which the claim is based and include appointments with investigators, prosecuting attorney and/or correction officials, grand jury, trial, plea hearings, sentencing hearings, parole board hearings, and other post conviction hearings.

3. Eligible costs include mileage, airfare, bus fare, train fare, lodging and meals.

4. The victim/claimant must otherwise qualify for compensation before any award can be

considered.

5. All expenses must be verified by supporting documentation and by signatures of the appropriate individual(s)/official(s).

6. All expenses must be evaluated to determine reasonableness of expenses and eligible award amount.

7. Additional information and supporting documentation may be requested for determination of expense eligibility.

8. Limitations for court related transportation include, but are not limited to the following:
   a. If there is more than one (1) claimant per request for court related travel, each request will be considered on a case-by-case basis, and the total amount allowable will be prorated among the claimants.
   b. Necessary and reasonable transportation costs to attend criminal justice proceedings will be considered for payment if the proceedings are held at least forty five (45) miles (one-way) from the victim's/claimant's residence.
   c. Award for transportation mileage costs shall be reimbursed at thirty-five cents (.35) per mile.
   d. Lodging (hotel/motel) costs reimbursement shall not exceed $80.00 per day, and meal expense reimbursement shall not exceed $30.00 per day unless there is more than one eligible person and then meal reimbursement shall be no more than $50.00 per day in the aggregate.
   e. Compensation for court related travel expenses may not exceed One Thousand Dollars ($1,000.00).

310 Repair and/or Replacement Costs

1. Compensation may be awarded for the reasonable repair or replacement costs for the victim/claimant to repair and/or replace exterior broken windows, doors, locks or other security devices of a residential dwelling destroyed by the offender during a violent crime and directly contribute to maintaining a healthy and/or safe environment for the victim/claimant.

2. Compensation may be awarded for the reasonable cost to replace keys or locks of the victim's residence, when, during the violent crime, the victim's keys were stolen.

3. The victim/claimant must otherwise qualify for compensation before any award can be considered.

4. All expenses must be verified by supporting documentation and by signatures of the appropriate individual(s)/official(s).

5. All expenses must be evaluated to determine reasonableness of expenses and eligible award amount.

6. Additional information and supporting documentation may be requested for determination of expense eligibility.

7. Compensation for repair and/or replacement costs may not exceed One Thousand Dollars ($1000.00).

311 Execution Travel

1. Compensation may be awarded for the reasonable and necessary costs of traveling to and from a place of execution for the purpose of witnessing the execution.

2. Eligible costs include mileage, airfare, bus fare, train fare, lodging and meals.

3. The victim/claimant must otherwise qualify for compensation before any award can be considered.

4. Additional information and supporting documentation may be required on an as needed basis for further determination of expense eligibility.

5. Limitations for execution travel include, but are not limited to the following:
   a. If there is more than one (1) claimant per request for execution travel, each request will be considered on a case-by-case basis, and the total amount allowable will be prorated among the claimants.
   b. Necessary and reasonable transportation costs to attend an execution will be considered for payment if the execution is held at least forty-five (45) miles (one-way) from the victim's/claimant's residence.
   c. Award for transportation costs shall be reimbursed at thirty-five cents (.35) per mile.
   d. Compensation for execution travel may not exceed One Thousand Dollars ($1,000).

312 School/College/University Tuition Loss

1. Eligible Expenses:
   a. Lost tuition may be eligible for tuition paid and unused by the victim during recovery of personal injuries, herein known as victim tuition loss.
   b. Lost tuition may be eligible for tuition paid and unused by the claimant during the victim's recovery of personal injuries, herein known as claimant tuition loss.
   c. Lost tuition may be eligible for tuition paid by the claimant and unused by the victim due to the victim's death.

2. Victim eligibility:
   a. The victim must otherwise qualify for compensation before any award can be considered.
   b. Tuition loss for the victim shall be limited to cases in which the victim had a loss of tuition during recovery of personal injuries, attended medical appointments and/or mental health counseling sessions.
   c. The victim must provide all requested supporting documentation.

3. Claimant eligibility:
   a. The victim/claimant must otherwise qualify for compensation before any award can be considered;
   b. Tuition loss for the claimant shall be limited to cases in which the claimant had a loss of tuition in order to assist the victim during the victim's recovery of personal injuries, accompanied victim to mental health counseling sessions and/or accompanied victim to medical appointments.
   c. The victim/claimant must provide all requested supporting documentation.

4. Verification: Supporting documentation as determined by the Division shall be submitted to verify and substantiate the expense eligibility. The following shall apply:
   a. The victim and/or claimant shall provide tuition loss supporting documentation and collateral source information.
   b. The victim or claimant shall provide a disability statement from the victim's attending licensed medical doctor or doctor of osteopathy licensed to practice medicine (see 4 [c] for exception) indicating the duration of the victim's disability.
   c. The disability statement shall be signed by a licensed medical doctor or doctor of osteopathy licensed to practice medicine. Disability statements signed by any other provider, such as therapists, shall not be accepted for consideration. Exception: Victim/Claimant may submit a Statement of Disability Report form completed and signed by a (Certified) Advanced Practice Registered Nurse in lieu of a medical doctor or doctor of osteopathy licensed to practice medicine. If the disability period appears to be unreasonable, then the victim/claimant will be required to have a medical doctor or doctor of osteopathy licensed to practice medicine complete the form. This will be determined on a case by case basis.
   d. Additional information and supporting documentation may be requested for further determination on an as-needed basis.

5. Limitations: The following shall apply:
   a. The victim must have been enrolled at a school, college or university as a full or part-time student at the time of the crime and unable to continue attendance at that school due to death or disability.
   b. The amount of the award shall be based on the amount of tuition not refunded by the school and reduced by any available collateral sources including, but not limited to, school grants.
   c. Textbook costs are not eligible for reimbursement.
   d. Tuition loss of a deceased victim shall not be eligible if the claimant does not have

legal obligation or liability of losses incurred by the victim. However, tuition loss may be eligible, if the claimant signed for financial responsibility of the tuition expense or made voluntary payments.

e. Compensation for tuition loss my not exceed Two Thousand Dollars ($2,000.00).
f. The victim and claimant may both receive compensation for lost tuition during the victim's recovery of crime related injuries. (This only applies to claims where both the victim and the claimant were enrolled at a school, college or university as full or part-time students at the time of the crime and unable to continue because of the victim's disability resulting from the crime.) The amount of compensation shall be prorated among the victim and claimant and the total amount of the award may not exceed Two Thousand Dollars ($2,000.00).
g. The total amount for victim or claimant lost tuition may not exceed the aggregate limitation of Two Thousand Dollars ($2,000.00).

313 Other Necessary Crime-Related Expenses

1. Other crime related expenses not previously mentioned above may be considered on a case-by-case basis. Expenses must be necessary and reasonable for actual services and products directly related to crime injuries.

2. Victim and Claimant Eligibility:

   a. Victim must otherwise qualify for compensation before any award can be considered.
   b. Claimant must otherwise qualify for compensation before any award can be considered.

3. Verification: Supporting documentation as determined by the Division shall be submitted to verify and substantiate the expense eligibility. The following shall apply:
   a. The victim/claimant shall provide expense information.
   b. The victim/claimant shall provide collateral source information.
   c. Additional information and supporting documentation may be requested for further determination on an as-needed basis.

4. Limitations: Each request will be processed on a case-by-case basis to determine the necessity and reasonableness of service or product and expense.

314 Ineligible Expenses

1. Ineligible expenses include, but not limited to, damaged or stolen property, pain and suffering, expenses not directly related to the crime injuries, attorney's fees, or treatment not rendered by a licensed medical professional, mental health provider or facility.

Chapter 04 Administration

400 Repayment of Award

1. The Office of the Attorney General shall have a right to commence a civil action for the recovery of overpayment of compensation awards pursuant to Section 99-41-27(3) of the Mississippi Code, as amended.

2. The defendant as in § 400 (1) shall be responsible for the fees, court costs, and other expenses of litigation.

401 Shortage of Funds for Awards

1. In the event the amount of approved claims exceeds the available funds during any defined period, the department, at its sole discretion, may proportionately reduce benefits paid to claimants.

2. Eligible claims may be held until completion of the defined period and proportioned reductions may be computed accordingly at that time.

3. A claimant who has received a proportioned reduction of benefits shall not be entitled to future retroactive reimbursements.

4. Compensation payments may be awarded in the order in which the claim application was received and completed.

5. When a purchase invoice is made, the funds for payment of the award are thereby encumbered.

6. This rule shall be effective upon the filing date and apply to claims pending, claims having prior approval or claims henceforth received.

402 Filing a False Claim, Furnishing False Information and Failing to Disclose Information

1. The Office of the Attorney General shall have a right to commence a civil action for the recovery of compensation awards obtained by the claimant upon filing a false claim, furnishing false information and/or failing to disclose pertinent information.

2. The defendant as in § 402 (1) shall be responsible for the fees, court costs, and other expenses of litigation.

403 Advance Award

1. An advance award may be made, if the director
   a. determines that the claim is one with respect to which an award probably will be made; and
   b. the claimant will suffer financial hardship unless an advance award is made.

2. The advance award may not exceed Five Hundred Dollars ($500.00).

3. The amount of the advance award shall be:
   a. deducted from the final award; or
   b. repaid by and recoverable from the claimant to the extent that it exceeds the final award.

Chapter 05 Appeal Process

500 Overview

1. If the Director denies a claim for any reason, the victim/claimant has the right to appeal. The appeal process consists of three steps: (1) reconsideration, (2) contested hearing and (3) circuit court appeal.

2. All requests must be filed in a timely manner and written notice and other requested information must be sent within the time limits set. If information is not submitted within the time limits, the appeal may be denied on that basis alone. Each phase of the appeal process must be exhausted before the victim/claimant moves onto the next step.

501 Reconsideration

1. The Director, on his/her own motion or on request of the victim/claimant, may reconsider a decision granting or denying an award or determining its amount. An Order of Reconsideration of an award shall not require a refund of amounts previously paid unless the award was obtained by fraud.

2. Requesting a Reconsideration:
   a. The victim/claimant must provide a written request for a reconsideration within thirty (30) days from the date of notification of the original determination.
   b. The written request shall contain:
      i. a brief position statement and the reason(s) why the decision is wrong and why he or she is dissatisfied with the decision; and,
      ii. newly discovered information that would have resulted in a different determination had the information been known to the victim/claimant and the Director at the time of the original determination.
   c. The victim/claimant may also provide oral evidence to support their request.

3. When a request for a reconsideration is received, the Director will:
   a. Review the claim, as well as any additional written and/or oral evidence;
   b. Talk to the victim/claimant and/or witnesses if needed; and,
   c. Conduct any additional claim investigations.

4. Order of Reconsideration:
   a. After the reconsideration, the Director shall enter the findings of the reconsideration into an Order.
   b. The victim/claimant will be notified in writing of the decision of the reconsideration.
   c. The victim/claimant who disagrees with the Order may request a contested hearing within thirty (30) days from the date of receipt of the notification of the decision.
   d. The decision of the reconsideration becomes a final decision within thirty (30) days of notification of the decision if no request for a contested hearing is received.

502 Contested Hearing

1. The victim/claimant who disagrees with the decision of the Director after reconsideration may contest such decision within thirty (30) days after notification of issuance of the decision.

2. Requesting a Contested Hearing:
   a. The victim/claimant must provide a written request for a contested hearing to the Director within thirty (30) days from the date of notification of reconsideration.
   b. The written request shall contain:
      i. a brief position statement and the reason(s) why he/she is dissatisfied with the decision of the reconsideration;
      ii. newly discovered information that would have resulted in a different determination had the information been known to the victim/claimant and the Division at the time of the original determination and/or reconsideration determination;
      iii. that the victim/claimant exercised reasonable diligence to ascertain such information at the time of the original determination and/or reconsideration; and,
      iv. the name, address and telephone number of any potential witnesses.

3. When a request for a contested hearing is received, the Division shall:
   a. Send the victim/claimant a letter acknowledging receipt of the request for a hearing;
   b. Set a date, time and place for the hearing;
   c. Send the victim/claimant a Notification of the Contested Hearing to include the date, time and place of the hearing;
   d. Send the victim/claimant the Policies for a Contested Hearing, providing the administrative rules of a hearing; and,
   e. Send the victim/claimant the Policies for Issuance of Subpoenas, providing instructions for requesting the attendance of any potential witness.

4. The victim/claimant shall provide an acknowledgment that they have received the Notification of the Contested Hearing.

5. Witnesses:
   a. The victim/claimant may request the issuance of subpoenas for witnesses on his or her behalf for the contested hearing.
   b. The request for issuance of a subpoena should be made in writing to the Division and received no later than twenty (20) days prior to the hearing date.
   c. The cost of the issuance of a subpoena shall be the responsibility of the victim/claimant and is payable in advance at the current rate of such cost. The fee shall be in the form of a cashier's check, money order or bona fide attorney's check made payable to the sheriff of the county where the person subpoenaed may be found.
   d. All witnesses shall testify under oath and shall be subject to cross examination.

6. The Director shall have the power to subpoena witnesses, compel their attendance and require the production of records and other evidence.

7. The hearing shall be informal and technical rules of evidence shall be relaxed.

8. Failure to appear, without good cause, at the hearing will be considered as a withdrawal, waiving the right to appeal and will result in dismissal of the claim. If the victim/claimant is unable to appear in person, a telephone hearing may be requested. It is within the discretion of the hearing officer to allow or disallow a telephone hearing which is requested in a timely fashion.

9. Record of the Hearing:
   a. In order to preserve the record of the hearing, a recording shall be made by a court reporter retained at the expense of the Division.
   b. A record of the hearing in a contested case shall be made and shall be transcribed upon request of any party who shall pay transcription costs unless otherwise ordered by the Division.

10. Order after Contested Hearing:
    a. After the hearing, the Director shall enter the findings of the contested hearing into an Order.
    b. The victim/claimant will be notified in writing of the decision of the contested hearing.
    c. A victim/claimant who disagrees with the Order may appeal to the circuit court within thirty (30) days after being notified of the Order.
    d. The contested hearing decision becomes the final ruling of the Director within thirty (30) days of notification of the decision if no appeal before the circuit court is made.

Chapter 06 Payment for Sexual Assault Medical Forensic Examinations

600 Authority

The Division of Victim Compensation, Office of the Attorney General is authorized to pay for all medical forensic examinations done for the purpose of sexual assault evidence collection. Mississippi Code Annotated § 99-37-25 provides that the bill for the medical forensic examination and the preparation of the sexual assault evidence collection kit will be sent to the Division of Victim Compensation, Office of the Attorney General. No bill for the examination will be submitted to the victim, nor shall the medical facility hold the victim responsible for payment. No payments shall be made that exceed the amount of money in the Crime Victims' Compensation Fund. M.C.A. § 99-41-29.

601 Application

1. All bills submitted for payment should be accompanied by a copy of the State of Mississippi Crime Laboratory Sexual Assault Examination Form, and include a standard UB-04 form or other official itemized billing form. NOTE: For minor victims receiving a sexual assault medical forensic examination seventy-two hours or longer after the sexual assault, the authorized non-acute sexual assault exam form for minors >72 hours should be submitted.

2. Payment may be made whether or not the victim pursues prosecution. Though it is strongly encouraged that the victim reports the sexual assault to law enforcement, reporting the assault is the victim's decision. This does not apply to state mandated reporting requirements for minors, vulnerable adults, and certain violent crimes.

3. A request for payment for the sexual assault medical forensic examination must include the International Classification of Diseases (ICD-9) code V71.5 for examination of the victim of sexual assault, code E960.1 for a victim of rape, code V71.81 when there are no forensic findings for a sexual assault exam, code 995.53 when there are forensic findings for a sexual assault exam of a child, or code 995.83 when there are forensic findings for a sexual assault exam of an adult.

4. A request for payment for the sexual assault medical forensic examination must include the following information as applicable:
   a. Physician/ARNP, Office or other outpatient services (CPT codes 99201-99205 for New Patient, CPT codes 99211-99215 for Established Patient, CPT codes 99241-99245 for office consultations); Emergency Department Services (CPT codes 99281-99285 for New or Established Patient) which include the collection of evidence as needed in the sexual assault kit.
   b. Venipuncture for the collection of whole blood samples (CPT codes 36400, 36405, 36406, 36410, 36415).
   c. Laboratory test for pregnancy (CPT codes 84702, 84703, 81025).

d. HIV Testing (CPT codes 86701-86703, 86687-86689) if medically necessary.
e. Hepatitis Panel (CPT codes 80074, 86705, 86709, 87340, 86803) if medically necessary.
f. RPR (CPT codes 86592, 86593) if medically necessary.
g. Herpes Simplex (CPT codes 86694, 86696) if medically necessary.
h. Gonorrhea culture (CPT codes 87040, 87070, 87081, 87590, 87591, 87592) if medically necessary.
i. Chlamydia culture (CPT codes 87320, 86631, 86632, 87110) if medically necessary.
j. Urinalysis (CPT codes 81000-81003, 81005, 81007, 81015) if medically necessary.
k. Urine culture (CPT codes 87086, 87088) if medically necessary.
l. Trichomonas vaginalis (CPT codes 87660, 87205, 87210) if medically necessary.
m. Other laboratory tests if medically necessary.
n. Colposcopy (CPT codes 57420, 57452, 99170).
o. Camera/Other photography (CPT code 99199). Use of this code requires additional reporting information to verify that a camera/photography was used.
p. Medication for prevention of STDs, Hepatitis B, pregnancy, and a three-day supply of HIV prophylaxis.

5. If the victim refuses to have all or portions of the sexual assault exam completed, notes to verify this should be included in the exam form. Payment will be considered for a "partial exam" when allowable exam expenses are incurred, such as medication treatment for prevention of STDs, Hepatitis B, pregnancy, and a three-day supply of HIV prophylaxis.

6. Follow-up sexual assault medical forensic exams/related labs will be considered for payment when the victim is a minor; however, this expense will only be reimbursed the difference between the amount already paid out for the exam (and any other allowable expense) and the maximum payment amount ($1,000) allowed. If the prior payment(s) totals $1,000 then these additional expenses will not be eligible for payment.

7. Expenses for procedures other than those listed above must be justified and submitted, in writing, as being necessary and directly related to the medical forensic examination.

8. Payments for admissions, treatment of injuries, medications such as anti-depressants, sedatives or tranquilizers are NOT ELIGIBLE under this policy. See § 602 (6).

602 Eligibility Guidelines

1. In order to be considered for payment, the following criteria must be met:
   a. The crime must have occurred in Mississippi.
   b. The initial sexual assault medical forensic examination and collection of evidence must have occurred after June 30, 2005.
   c. All requests for payment must be post-marked and received by the Office of the Attorney General, Division of Victim Compensation, within ninety (90) days of the forensic medical examination. The ninety (90) days may be waived if the medical provider can

show good cause for failure to submit the payment request within such time. Good cause will be determined on a case by case basis.

d. Only costs associated with sexual assault medical forensic exams are considered for payment through this program.

2. A payment request from the medical provider should only be submitted for a victim who is not covered by a federal or federally financed program, such as Medicaid, Medicare, Tricare, or the Veterans' Administration. This stipulation has been made pursuant to the federal Victims of Crime Act (VOCA). In addition, a payment request from the medical provider should not be submitted for a victim covered by the Mississippi Children's Health Insurance Plan (CHIPS).

3. The victim's private insurance should not be billed for the cost of the sexual assault medical forensic examination.

4. A reimbursement request from the medical provider should not be submitted for a victim who was confined in a federal, state, county or city jail or correctional facility at the time of the sexual assault. The medical provider should contact the appropriate jail or correctional facility for payment information.

5. A reimbursement request from the medical provider should not be submitted for a medical forensic examination of the person arrested, charged or convicted of the sexual assault. Such payment shall be made by the county directly to the medical provider.

6. Other expenses incurred by the victim not payable under these criteria may be eligible for payment through the Victim Compensation Program. See § 601 (8). The medical provider may not apply for these program benefits.

603 Payment Procedures

1. The bill for the sexual assault medical forensic examination must not be submitted to the victim.

2. A completed copy of the State of Mississippi Crime Laboratory Sexual Assault Examination Form (or authorized sexual assault exam form for minors >72 hours), and a UB-04 form or other appropriate itemized billing form should be submitted to the Office of the Attorney General, Division of Victim Compensation, Post Office Box 220, Jackson, MS 39205-0220.

604 Payment Amount

1. The Office of the Attorney General will pay up to $1,000 per case. This fee includes the following limits:

a. Medical personnel time to include physician, nurse practitioner, or Sexual Assault Nurse Examiner's (S.A.N.E.) fee - $350
b. Facility fee to include supplies, equipment and medications for the prevention of STDs, Hepatitis B, pregnancy (ECP), and a three-day supply of HIV prophylaxis - $450
c. Fees for lab tests - $200

2. Expenses for procedures other than those listed in § 601(4) must be justified and submitted in writing, as being necessary and directly related to the medical forensic examination.

3. Payments for admissions, treatment of injuries, medications such as anti-depressants, sedatives or tranquilizers are NOT ELIGIBLE under this policy. See § 602 (6).

4. No payment shall be made which exceeds the amount of money in the Crime Victims' Compensation Fund. M.C.A. § 99-41-29.

5. Payment made to the provider by the Office of the Attorney General Victim Compensation Division for the sexual assault medical forensic examination shall be considered by the provider as payment in full.

6. The medical provider may not submit any remaining balance to the victim/claimant or to the Victim Compensation Division after reimbursement for the sexual assault medical forensic examination by a federal or federally financed program, such as Medicaid, Medicare, Tricare, or the Veterans' Administration or by a state financed program such as Mississippi Children's Health Insurance Plan (CHIPS). EXCEPTION: If, for example, the victim has a co-pay or has used all of their allowed paid medical visits with Medicaid, the medical provider may submit those expenses to the Victim Compensation Division.

605 Appeal Process

1. The Division Director, on his/her own motion or on request of the medical provider, may reconsider a decision granting or denying a payment.

2. Reconsideration: If the Victim Compensation Division denies a payment request the medical provider may appeal the decision by notifying the Division in writing. The written request for a reconsideration should be provided within thirty (30) days from the date the medical provider received the decision notification from the Victim Compensation Division. The request should include the following and clearly state: (1) that the medical provider is requesting a reconsideration; (2) in a brief statement, the reason the provider is requesting a reconsideration; and (3) any information omitted from the original payment request that would have resulted in a different decision had the information been provided to the Division.

3. Contested Hearing: If the Victim Compensation Division upholds the original decision the medical provider may appeal the decision by notifying the Division in writing. The

written request for a contested hearing should be provided within thirty (30) days from the date the medical provider receives the decision notification from the Victim Compensation Division. The request should include the following and clearly state: (1) that the medical provider is requesting a contested hearing; (2) in a brief statement, the reason the provider is requesting a contested hearing; and (3) any information omitted from the original payment request that would have resulted in a different decision had the information been provided to the Division.

4. Failure to appear at the hearing, without good cause, will be considered as a withdrawal, waiving the right to appeal and will result in dismissal of the claim.

5. The medical provider will be notified of all appeal request decisions in writing.

6. Circuit Court: A medical provider who disagrees with the contested hearing decision may appeal to the circuit court where the medical provider is located or the Circuit Court of the First Judicial District of Hinds County by filing a petition with the clerk of the court and executing and filing bond payable to the State of Mississippi with sufficient sureties to be approved by the clerk of the court, conditioned upon the payment of all costs of appeal, including the cost of preparing the transcript of the contested hearing. The petition and bond shall be filed within thirty (30) days of receipt of the contested hearing decision.

7. The decision of the contested hearing becomes the final ruling of the Director within thirty (30) days of notification of the decision if no appeal before the circuit court is made.

CHAPTER 07 – ADDRESS CONFIDENTIALITY PROGRAM

700 Program Description

The Address Confidentiality Program provides services to residents of Mississippi who are victims of domestic violence, sexual assault, or stalking. It is the intent of the Legislature to assist people attempting to escape from actual or threatened domestic violence, sexual assault or stalking by establishing a confidential address to prevent their assailants or probable assailants from finding the victim's location. The purpose of this program is to establish an exemption to the Mississippi Public Records Act of 1983 to enable public bodies to respond to requests for public records without disclosing the victim's location, to enable interagency cooperation with the Office of the Attorney General in providing address confidentiality for victims, and to enable public bodies to accept a program participant's use of an address designated by the Office of the Attorney General as a substitute mailing address. The Address Confidentiality Program helps victims keep their location confidential by providing them with a substitute address and a mail forwarding service for use when interacting with state and local agencies.

701 Authority

The Office of the Attorney General is authorized to establish and enforce these rules and procedures by virtue of Mississippi Code Annotated § 99-47-1(9). These rules facilitate the administration of the Address Confidentiality Program in accordance with Mississippi Code Annotated § 99-47-1; effective July 1, 2009, pursuant to Mississippi Code Annotated.

702 Definitions

1. "ACP" means Address Confidentiality Program.

2. "Address Confidentiality Program" means the statutorily created program for implementing the provisions of Mississippi Code Annotated § 99-47-1, within the Office of the Attorney General.

3. "Certification" means the process by which an applicant is determined eligible to participate in the Address Confidentiality Program.

4. "Confidential address" means any residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant.

5. "Domestic violence" means any of the following acts committed against a current or former spouse, a current or former family or household member, a person with a child in common, or a person in a current or former dating relationship:
   a. A violation of a domestic violence protective order;
   b. Simple or aggravated domestic violence as defined in Mississippi Code Annotated § 97-3-7(3) or § 97-3-7(4); or
   c. Threats of such acts.

6. "Program participant" means a person certified by the Office of the Attorney General as an ACP participant.

7. "Public body" (as defined by Mississippi Code Annotated § 25-61-3 and for purposes of this chapter) means any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. The term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.

8. "Sexual assault" means an act as defined in Mississippi Code Annotated § 45-33-23(g) as a sex offense.

9. "Stalking" means an act as defined in Mississippi Code Annotated § 97-3-107 or § 97-45-15.

10. "Substitute address" means an address designated and assigned by the Office of the Attorney General to a program participant as a substitute mailing address under the Address Confidentiality Program.

11. "Victim" means an individual against whom domestic violence, sexual assault, or stalking has been committed. For purposes of ACP eligibility, a victim who is a registered sex offender or a victim who is required to register as a sex offender pursuant to Mississippi Code Annotated § 45-33-25 is not eligible to participate in the Address Confidentiality Program.

703 Application, Certification Process and Receipt of Mail

1. To apply for the Address Confidentiality Program, an applicant must:
   a. Be a resident of the State of Mississippi;
   b. Be a victim of domestic violence, sexual assault, or stalking; and
   c. Complete the Address Confidentiality Program application form(s); and submit the completed application form(s) to the Office of the Attorney General, Victim Compensation Division.

   NOTE: It is not a requirement that the domestic violence, sexual assault, or stalking occur in the State of Mississippi for ACP participation.

2. An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may apply to the Office of the Attorney General to have an address designated by the Office of the Attorney General serve as the substitute address for the person, the minor or the incapacitated person. Applications shall be filed on the application form(s) prescribed by the Office of the Attorney General. The application shall include the following under Mississippi Code Annotated § 99-47-1(2):
   a. An attestation by the applicant that the applicant has good reason to believe that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, or stalking, and that the applicant fears for his or her safety, or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made.
   b. The confidential address and a telephone number or numbers where the applicant can be contacted by the Office of the Attorney General.
   c. The confidential address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence, stalking, or sexual assault.
   d. A designation of the Office of the Attorney General as agent for service of process and receipt of mail.

e. A statement of any existing or pending court order or court action involving the applicant that is related to divorce proceedings, child support, child custody, or child visitation; the court that issued each order or has jurisdiction over an action shall be noted.
f. The signature of the applicant and a representative of a domestic violence shelter or rape crisis center as designated under Mississippi Code Annotated § 99-47-1 (6) and Administrative Rule § 704 who assisted in the preparation of the application , and the date on which the applicant signed the application.
g. Evidence from at least one of the following that the applicant is a victim of domestic violence, sexual assault, or stalking:
   i. Law enforcement, court or other local, state or federal agency records or files;
   ii. Documentation from a domestic violence shelter or rape crisis center;
   iii. Other forms of evidence as determined by the Office of the Attorney General.

3. Upon approval of an ACP application by the Office of the Attorney General, the applicant is certified as a program participant. An individual who is certified as a program participant shall be issued an ACP authorization card (with an authorization code number) by the Office of the Attorney General. The term of a program participant's certification shall be four (4) years following the date of certification (unless the certification is withdrawn, cancelled, or invalidated before that date. See § 707).

4. For continued and uninterrupted ACP services, within forty-five (45) days from the date of expiration of the program participant's certification, said participant may complete and submit a new ACP application (renewal) to the Office of the Attorney General, Victim Compensation Division. Upon approval of the ACP application renewal by the Office of the Attorney General, the program participant will be recertified for program participation. At such time, the newly recertified program participant shall be issued a new ACP authorization card by the Office of the Attorney General. The term of the program participant's recertification shall be four (4) years following the date of certification unless the certification is withdrawn, cancelled, or invalidated before that date. See § 707.

5. The Office of the Attorney General shall forward all first-class, certified or registered mail to the program participant at the confidential address provided by the program participant. The Office of the Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered.

704 <u>Assistance for Program Applicants</u>

1. The Office of the Attorney General shall refer potential participants to domestic violence shelters or rape crisis centers that provide shelter and counseling services to either victims of domestic violence, sexual assault, or stalking to assist persons applying to be ACP participants. Mississippi Code Annotated § 99-47-1(6).

2. All application assistants must:
   a. Be a current domestic violence shelter/rape crisis center director or current domestic violence shelter/rape crisis center employee designated by the domestic violence shelter/rape crisis center director to serve as an application assistant;
   b. Attend required training sessions provided by the Office of the Attorney General; and
   c. Agree to adhere to the policies, procedures, and directions provided by the Office of the Attorney General for rendering assistance to program applicants.

3. The Office of the Attorney General reserves the right to bar any individual acting as an application assistant from submitting ACP documentation on behalf of a potential participant should said individual fail to abide by the requirement set forth in this section or for failing to act in accordance with the requirements of the Address Confidentiality Program.

4. An application assistant is not deemed to be an employee of the Office of the Attorney General or an agent of the Office of the Attorney General in any manner. The application assistant will not hold himself or herself out as, or claim to be an officer or employee of the Office of the Attorney General or the State of Mississippi and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Office of the Attorney General or the State of Mississippi.

705 Filing a False Application or Furnishing False Information

1. A program applicant who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application or while a program participant, shall be guilty of a misdemeanor, punishable by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months. Mississippi Code Annotated § 99-47-1(2) (d).

2. A fraudulent attempt to gain access to a program participant's confidential address shall constitute a felony, punishable by a fine not to exceed Two Thousand Dollars ($2,000.00) or by imprisonment in the county jail for a term not to exceed two (2) years. Mississippi Code Annotated § 99-47-1(2) (e).

3. Knowingly entering the Address Confidentiality Program to evade civil liability or criminal prosecution shall constitute a felony, punishable by a fine not to exceed Two Thousand Dollars ($2,000.00) or by imprisonment in the county jail for a term not to exceed two (2) years. Mississippi Code Annotated § 99-47-1(2) (f).

706 Appeal Process

1. The Office of the Attorney General (Victim Compensation Division Director), on his/her motion or on request of the victim, may reconsider a decision granting or denying ACP participation.

2. If the Office of the Attorney General denies an application or cancels ACP certification for any reason, the applicant or an adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may appeal the decision by notifying the Office of the Attorney General in writing. The written request for reconsideration must be provided within thirty (30) days from the date the applicant receives the decision notification from the Office of the Attorney General. The request must include the following and clearly state:
   a. That the applicant is requesting a reconsideration;
   b. In a brief statement, the reason the applicant is requesting a reconsideration; and
   c. Any information omitted from the original application that would have resulted in a different decision had the information been provided to the Office of the Attorney General.

3. The decision of the reconsideration becomes the final ruling of the Office of the Attorney General within thirty (30) days of notification of the decision if no request for a contested hearing is received.

4. If the Office of the Attorney General upholds the original decision, the applicant or an adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may appeal the decision by notifying the Office of the Attorney General in writing. The written request for a contested hearing must be provided within thirty (30) days from the date the applicant receives the decision notification from the Office of the Attorney General. The request must include the following and clearly state:
   a. That the applicant is requesting a contested hearing;
   b. In a brief statement, the reason the applicant is requesting a contested hearing;
   c. Any information omitted from the original application that would have resulted in a different decision had the information been provided to the Office of the Attorney General.

5. When a request for a contested hearing is received, the Office of the Attorney General shall:
   a. Send the applicant a letter acknowledging receipt of the request for a hearing;
   b. Set a date, time, and place for the hearing;
   c. Send the applicant a Notification of the Contested Hearing to include the date, time, and place of the hearing;
   d. Send the applicant the Policies for a Contested Hearing, providing the administrative rules of a hearing; and
   e. Send the applicant the Policies for Issuance of Subpoenas, providing instructions for requesting the attendance of any witness.

6. Witnesses:
   a. The applicant or an adult, a parent or guardian, acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may request the attendance of witnesses on his or her behalf for the contested hearing.
   b. The request for issuance of a subpoena should be made in writing to the Office of the Attorney General and received no later than twenty (20) days prior to the hearing date.
   c. The cost of the issuance of a subpoena shall be the responsibility of the applicant and is payable in advance at the current rate of such cost. The fee shall be in the form of a cashier's check, money order, or bona fide attorney's check made payable to the sheriff of the county where the person subpoenaed may be found.
   d. All witnesses shall testify under oath and shall be subject to cross examination.

7. The Office of the Attorney General shall have the power to subpoena witnesses, compel their attendance, and require the production of records and other evidence.

8. Failure to appear at the hearing, without good cause, will be considered as a withdrawal, waiving the right to appeal and will result in dismissal of the claim.

9. Record of the Hearing:
   a. In order to preserve the record of the hearing, a recording shall be made by a court reporter retained at the expense of the Office of the Attorney General.
   b. A record of the hearing in a contested case shall be made and shall be transcribed upon request of any party who shall pay transcription costs unless otherwise ordered by the Office of the Attorney General.

10. The applicant will be notified of all appeal request decisions in writing.

11. An applicant who disagrees with the contested hearing decision may appeal to the circuit court where the applicant resides or the Circuit Court of the First Judicial District of Hinds County by filing a petition with the clerk of the court and executing and filing bond payable to the State of Mississippi with sufficient sureties to be approved by the clerk of the court, conditioned upon the payment of all cost of appeal, including the cost of preparing the transcript of the hearing before the Attorney General. The petition and bond shall be filed within thirty (30) days of receipt of the final decision of the Attorney General.

12. The decision of the contested hearing becomes the final ruling of the Office of the Attorney General within thirty (30) days of notification of the decision if no appeal before the circuit court is made.

707 <u>Cancellation or Withdrawal of ACP Certification</u>

1. Program certification shall be canceled if any of the following occur:
   a. The program participant obtains a name change. However, the person may immediately reapply for certification under their new name. A copy of legal documents

verifying the name change must be submitted. If the applicant is applying merely because of a name change, submission of a new ACP application is all that is required.

b. The program participant applied using false information.
c. The program participant discloses his/her confidential address to the assailant or probable assailant.
d. The program applicant moves out of the State of Mississippi.

2. Program certification may be canceled if any of the following occur:
   a. A change in the residential address or telephone number from the address or the telephone number listed for the program participant on the application unless the program participant provides the Office of the Attorney General with notice of the new contact information within a minimum of seven (7) days before the change of address occurs.
   b. If mail forwarded to the program participant's confidential address is returned as undeliverable or if service of process documents are returned as unable to be served.

3. The Office of the Attorney General shall send notice of cancellation to the program participant, with the notice stating the reason(s) for cancellation. The program participant shall have thirty (30) days from receipt of the notice of cancellation to appeal the cancellation decision.

4. Upon cancellation of program certification, the program participant shall return the ACP authorization card to the Office of the Attorney General.

5. An ACP participant may terminate their program certification by filing a notarized request for withdrawal from the program with the Office of the Attorney General and by returning their current authorization card to the Office of the Attorney General. The Office of the Attorney General shall send a letter acknowledging receipt of the participant's request for withdrawal from the program.

6. An individual who ceases to be a program participant is responsible for notifying persons/agencies, which use the substitute address designated by the Office of the Attorney General as the program participant's address, that the designated substitute address is no longer the individual's address.

7. Any mail received after an individual ceases to be a program participant shall be returned to sender.

708 Local/State Agency Use of Designated Address

1. An ACP participant may request that public bodies use the address designated by the Office of the Attorney General as the participant's substitute address.

2. The ACP participant, and not the Office of the Attorney General, is responsible for requesting that any public body use the address designated by the Office of the Attorney General as the substitute address of the program participant. Mississippi Code Annotated § 99-47-1(4) (a).

3. If there is any criminal proceeding on behalf of the program participant, the program participant is also responsible for notifying any law enforcement agency and the district attorney's office of the person's participation in the program.

4. There shall be no responsibility on the part of any district attorney's office or any law enforcement agency to request that a public body use the substitute address.

5. Public bodies shall accept the address designated by the Office of the Attorney General as a program participant's substitute address, unless the Office of the Attorney General has determined that:
   a. The public body has a bona fide statutory or administrative requirement for the use of the confidential address of the program participant; and
   b. The confidential address will be used only for those statutory and administrative purposes.

6. A public body requesting an exemption under Mississippi Code Annotated § 99-47-1(4) must provide the following in writing to the Office of the Attorney General:
   a. The public body's reason for requesting the exemption;
   b. Identification of the statute or administrative rule which demonstrates the public body's bona fide requirement and authority for the use of the confidential address of the program participant;
   c. Identification and description of the specific record or record series for which the exemption is requested;
   d. Identification of the individual(s) who will have access to the record;
   e. An explanation of why the public body cannot meet its statutory or administrative obligations by a change in the public body's internal procedures.

7. If the Office of the Attorney General determines that a public body has a bona fide statutory or administrative requirement for the use of a program participant's confidential address and that the address will be used only for those statutory and administrative purposes, the Office of the Attorney General may issue a written exemption for the public body.

8. The Office of the Attorney General's denial of a public body's exemption request shall be made in writing and include a statement of the specific reason(s) for the denial.

9. A program participant may use the substitute address designated by the Office of the Attorney General as his or her work address.

10. The Office of the Attorney General shall forward all first-class, certified or registered mail to the program participant at the confidential address provided by the program participant. The Office of the Attorney General shall not be required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered.

11. A program participant's confidential address, telephone number, and any other identifying information within the possession of a public body, as defined by Mississippi Code Annotated § 25-61-3, shall not constitute a public record within the meaning of the Mississippi Public Records Act of 1983. The program participant's actual address and telephone number shall be confidential and no public body shall disclose the program participant's address, telephone number, or any other identifying information.

709 Disclosure of Records

1. Under Mississippi Code Annotated § 99-47-1(5), a program participant's confidential address, telephone number, and any other identifying information in the possession of the Office of the Attorney General shall not constitute a public record within the meaning of the Mississippi Public Records Act of 1983, and shall not be disclosed during discovery in any criminal prosecution.

2. The Office of the Attorney General shall not make any records in a program participant's file available for inspection or copying other than the substitute address, except under the following circumstances:
   a. If requested by a law enforcement agency for their official use only, but not to be included in any reports made by the law enforcement agency or required to be produced in discovery in any criminal prosecution;
   b. If directed by a court order, to a person identified in the order;
   c. If certification has been cancelled, withdrawn, or invalidated; or
   d. To verify, if requested by a public body, the participation of a specific program participant, in which case the Office of the Attorney General may only confirm participation in the ACP program and confirm information supplied by the requester.

3. The Office of the Attorney General shall provide notification to the program participant (by telephone and written notice) in advance of pending disclosure if not otherwise prohibited by law.

710 Service of Process

1. The Office of the Attorney General shall be an agent of the program participant upon whom any summons, writ, notice, demand, or process may be served.

2. Service on the Office of the Attorney General of any summons, writ, notice, demand, or process may be made by mailing two (2) copies to the substitute address or by delivering two (2) copies to the Office of the Attorney General, Victim Compensation Division, at P.O. Box 220, Jackson, Mississippi 39205-0220.

3. If a summons, writ, notice, demand, or process is served on the Office of the Attorney General, the Office of the Attorney General shall immediately forward a copy to the program participant at the program participant's current mailing address shown on the ACP records.

4. The Office of the Attorney General shall maintain in the program participant's file, a record of all summonses, writs, notices, demands, and processes served upon the Office of the Attorney General for that program participant. The Office of the Attorney General shall include in the file the date of such service and the action taken upon receipt of service.

711 Immunity

1. The Office of the Attorney General and/or its agents and/or employees are immune from civil and/or criminal liability for damages for conduct within the scope and arising out of the performance of the duties imposed under this section.

2. Any district attorney and his agents and employees and any law enforcement agency and its agents and employees are immune from liability, whether civil or criminal, for damages for conduct within the scope and arising out of the program.

3. Any employee or representative of a domestic violence shelter or rape crisis center who acts in good faith to assist a victim complete an application for participation in the Address Confidentiality Program shall be immune from civil and/or criminal liability.

4. Any assistance and/or counseling rendered pursuant to this section, by the Office of the Attorney General, its agents or employees, shall in no way be construed as legal advice.

TITLE 03 - OFFICE OF THE ATTORNEY GENERAL
Part 2 - Law Enforcement Officers and Fire Fighters Disability Trust Fund Administration Division

CHAPTER 01 – POLICIES AND PROCEDURES

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Title 03 – Office of the Attorney General
Part 2 - Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund
Policies and Procedures

100 Purpose

The Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund (herein referred to as "the Fund") was created by the Mississippi Legislature to provide disability benefits to law enforcement officers and fire fighters injured in the line of duty. These benefits shall be payable for the period of time the covered individual is physically unable to perform the duties of his or her employment [not to exceed one (1) year of payments for any one (1) injury].

The Fund originated at the Mississippi Department of Public Safety and came under the purview of the Mississippi Attorney General's Office on July 1, 2006, pursuant to Section 45-2-21, Mississippi Code Annotated (1972).

101 Definitions

1. "Law enforcement officer" means any lawfully sworn officer or employee of the state or any political subdivision of the state whose duties require the officer or employee to investigate, pursue, apprehend, arrest, transport or maintain custody of persons who are charged with, suspected of committing, or convicted of a crime.

2. "Fire fighter" means an individual who is trained for the prevention and control of loss of life and property from fire or other emergencies, who is assigned to fire-fighting activity, and is required to respond to alarms and perform emergency actions at the location of a fire, hazardous materials or other emergency incident.

3. "Covered individual" means a law enforcement officer or fire fighter (as defined above) while actively engaged in protecting the lives and property of the citizens of this state when employed by an employer as defined below. Employees of independent contractors are not included in this definition.

4. "Employer" means a state board, commission, department, division, bureau, or agency, or a county, municipality or other political subdivision of the state, which employs, appoints or otherwise engages the services of covered individuals.

102 Eligibility

Any actively employed law enforcement officer or fire fighter or reserve/auxiliary law enforcement officer or volunteer fire fighter, who is accidentally or intentionally injured in the line of duty as the direct result of a single incident, is eligible to receive benefits.

The individual must be employed by a state board, commission, department, division, bureau, or agency, or a county, municipality, or other political subdivision of the state. Employees of independent contractors are not eligible.

Effective January 1, 2011, reserve/auxiliary law enforcement officers and volunteer fire fighters are now eligible to receive benefits under the fund.

103 Exclusions

Chronic or repetitive injury is not covered.

Section 45-2-21, Mississippi Code Annotated (1972) states, "Compensation under this section shall not be awarded where a penal violation committed by the covered individual contributed to the disability or the injury was intentionally self-inflicted."

104 Exemption From Creditors

"Payments made from the Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund are exempt from the claims and demands of creditors of the covered individual" per Section 45-2-21, Mississippi Code Annotated (1972).

105 Obtaining Program Information

Applications are included in these policies and procedures as **EXHIBIT A**. Also, applications and instructions can be obtained from the following sources:

Website: www.ago.state.ms.us
Mail: Mississippi Attorney General's Office
Law Enforcement Officers and
Fire Fighters Disability Benefits Trust Fund
P. O. Box 220
Jackson, MS 39205

105 Obtaining Program Information (Continued)

Phone: (601) 359-3810

Applications for benefits must be submitted to the Mississippi Attorney General's Office at the mailing address listed above.

106 Application/Approval Process

Upon receipt of the application, information on the application is reviewed/investigated to insure validity of the claim for benefits. If the application for benefits is approved [based on the criteria stipulated in these policies and procedures and Section 45-2-21 of the Mississippi Code Annotated (1972)], a letter is sent via certified mail to the applicant indicating the approval of benefits, the amount of benefits to be awarded, the number of payments to be awarded, and the method of payment.

If the application for benefits is denied, a letter is sent via certified mail to the applicant including the grounds for denial of the application.

Applicants who disagree with any decision made have the right to appeal within thirty (30) days of receipt of the letter approving or denying benefits. For further information on the appeals process, see section XV.

Applications must be filed with the Mississippi Attorney General's Office within one (1) year of the date of injury.

Compensation shall not be awarded unless the incident of injury occurred on or after July 1, 2006.

107 Benefit Payments

Once the application is approved for actively employed law enforcement officers and fire fighters, the Mississippi Attorney General's Office will make a monthly disability benefit payment equal to thirty-four percent (34%) of the covered individual's regular base salary at the time of injury. The benefit is payable for the period of time the covered individual is physically unable to perform the duties of his or her employment [not to exceed one (1) year of payments for any one (1) injury]. The physician's report (which is included in the application for benefits) will document the dates the applicant is unable to work and the anticipated return to work date.

107 Benefit Payments (Continued)

Once the application is approved for reserve/auxiliary law enforcement officers and volunteer fire fighters, the Mississippi Attorney General's Office will make a monthly disability benefit payment equal to thirty-four percent (34%) of the covered individual's regular base salary, at the time of injury, from their primary employment, not to exceed the Worker's Comp maximum benefit amount. The benefit is payable for the period of time the covered individual is physically unable to perform the duties of his or her employment [not to exceed one (1) year of payments for any one (1) injury]. The physician's report (which is included in the application for benefits) will document the dates the applicant is unable to work and the anticipated return to work date. The Director of Administration at the Mississippi Attorney General's Office has discretion to determine the primary employment of applicants and the amount of the regular base salary to be used in computing benefits.

Benefit payments will be mailed to the covered individual on the first working day of each calendar month. Benefit payments from the Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund are excluded from gross income and thus are not taxable.

108 Workers' Compensation

If the covered individual receives workers' compensation benefits in addition to benefits from the Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund, then payments from the Fund will be **limited to the difference between workers compensation benefits and the amount of the covered individual's regular base salary**.

109 Confidentiality of Records

It is unlawful, except for purposes directly connected with the administration of the fund, for any person to solicit, disclose, receive or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards under this chapter without the written consent of the claimant or recipient. The records, papers, files and communications of the staff administering the fund must be regarded as confidential information and privileged and are subject to the Mississippi Public Records Act of 1983.

110 Overpayment of Benefits

If a payment or overpayment of benefits is made due to clerical error, mistaken identity, or innocent misrepresentation by or on behalf of the covered individual, the covered individual is responsible for repayment of the benefits received.

111 False Information

The filing of a false application for benefits (i.e., fraudulent or false information is knowingly submitted and/or failure to disclose pertinent information) is unlawful. In addition to any criminal penalties, the Mississippi Attorney General's Office shall have a right to commence civil action for the recovery of benefits obtained by the covered individual upon filing a false application. In such cases, the defendant shall be responsible for the fees, court costs, and other expenses of litigation.

112 Reduction of Benefit Payments

Notwithstanding any other provisions herein, no benefit payments shall be made unless adequate funds are available in the Law Enforcement Officers and Fire Fighters Disability Benefits Trust Fund. The State shall not be liable for a written order to pay compensation, except to the extent that monies are available in the fund on the date the claim is approved. The Mississippi Attorney General's Office has the right to adjust benefit payments so that the total amount awarded does not exceed the amount of money on deposit in the fund. During the approved benefit period when such reduction is due to the unavailability of funds, covered individuals may not seek future reimbursements due to any reductions in benefit payments. The Mississippi Attorney General's Office may opt to suspend payments until sufficient funding is on deposit in the fund.

113 Employer Responsibilities

The covered individual's employer is responsible for completing the "Employment Information" section of the application for benefits. In addition, the employer is required to send written notice in the format prescribed by the Mississippi Attorney General's Office notifying the Fund Administrator the exact date the employee returned to work. This written notice must be submitted no later than ten (10) working days after the employee returns to work. See format for "Employee Return to Work Letter" at **EXHIBIT B**.

114 Appeals

If the claim is denied for any reason, the applicant has the right to appeal within thirty (30) days of receipt of the letter denying benefits. The appeal process consists of two steps: reconsideration and a contested hearing.

Reconsideration is intended to be an informal resolution of a claim. If the applicant disagrees with the original determination, he or she may request reconsideration through the Director of Administration at the Mississippi Attorney General's Office.

If the applicant disagrees with the decision of reconsideration, he or she may request a contested hearing within fifteen (15) days of the decision of reconsideration before a committee. The committee consists of three (3) members appointed by the Attorney General. This hearing is informal; however, the applicant must appear in person at the hearing, and a record of the hearing is made. The decision made by the committee is the final decision of the Mississippi Attorney General's Office.

115 Re-Certification of Benefits

If a covered individual returns to work based on his or her physician's recommendation in the application for benefits and it is later determined the employee is still unable to perform his or her duties, the covered individual may apply for a re-certification of benefits. The covered individual must have his or her employer and physician complete the Application for Re-Certification of Benefits to extend the period the covered individual is unable to work. This period should begin on the last date worked (note: this date will be different from the date on the initial application for benefits). See **EXHIBIT C**. This application must be submitted as described in Section VI.

TITLE 03 - OFFICE OF THE ATTORNEY GENERAL
Part 3 - Procedure for Oral Proceedings on Rulemaking and
Procedure for Issuing Declaratory Opinions

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TITLE 03 - OFFICE OF THE ATTORNEY GENERAL
Part 3 - Procedure for Oral Proceedings on Rulemaking and
Procedure for Issuing Declaratory Opinions

Chapter 01 Procedure for Oral Proceedings on Rulemaking

100 Scope

These rules apply to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Office of the Attorney General pursuant to Mississippi Code Annotated § 25-43-3.104.

101 Scheduling an Oral Proceeding on a Proposed Rule

The Office of the Attorney General will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

102 Request for Oral Proceeding

Each request must be printed, typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8 ½ inches by 11 inches). Each request must include the full name, mailing address and telephone number of the requestor(s). Requests may be in the form of a letter addressed to the Office of the Attorney General or in the form of a pleading as if filed with the court. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

103 Notice of Oral Proceeding

The date, time and place of all oral proceedings shall be filed with the Secretary of State's Office and notice mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

104 Presiding Officer

The Attorney General or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

105 Public Presentations and Participation

Public participation shall be permitted at oral proceedings in accordance with the following:

1. At an oral proceeding on a proposed rule, persons may make oral statements, documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

2. Persons wishing to make oral presentations at such a proceeding shall notify the presiding officer at least three (3) business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted Office of the Attorney General.

3. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

4. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons who presentations represent the views of other individuals as well as their own views.

5. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.

6. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

106 Oral Proceeding Agenda

The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (a) call proceeding to order; (b) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Office of the Attorney General for the proposed rule; (c) call on those individuals who have contact the Office of the Attorney General about speaking on or against the proposed rule; (d) allow for rebuttal statements

following all participants' comments; and (e) adjourn the proceeding.

107 Questions

The presiding officer, where time permits, and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rulemaking proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

108 Documentary and Physical Submissions

Documentary and physical submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Office of the Attorney General, part of the rulemaking record, and are subject to the Office of the Attorney General's public records request procedure.

109 Record of the Oral Proceeding

The Office of the Attorney General may record oral proceedings by stenographic or electronic means.

Chapter 02 Procedure for Issuing Declaratory Opinions

100 Scope

This chapter consists of rules addressing the public's request for declaratory opinions and the Office of the Attorney General's disposition of requests for declaratory opinions. This chapter sets forth the Office of the Attorney General's rules governing the form, content and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Office of the Attorney General's procedures regarding the disposition of requests as required by Mississippi Code Annotated § 25-43-2.103.

101 Declaratory Opinions Requestors

Any person with a substantial interest in the subject matter may make a request to the Office of the Attorney General for a declaratory opinion by following the specified procedures. "Substantial interest in the subject matter" as used in this chapter means a party that is directly affected by the Office of the Attorney General's administration of the laws within the Office of the Attorney General's primary jurisdiction. "Primary jurisdiction of the Office of

the Attorney General" means the Office of the Attorney General has a constitutional or statutory grant of authority in the subject matter at issue.

102 Subjects Which May Be Addressed in Declaratory Opinions

The Office of the Attorney General will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Office of the Attorney General, (2) a rule promulgated by the Office of the Attorney General, or (3) an order issued by the Office of the Attorney General.

103 Circumstances In Which Declaratory Opinions Will Not Be Issued

The Office of the Attorney General may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not limited to:

1. the matter is outside the primary jurisdiction of the Office of the Attorney General;

2. lack of clarity concerning the question presented;

3. there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;

4. the statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;

5. the facts presented in the request are not sufficient to answer the question presented;

6. the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

7. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;

8. no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;

9. the question presented by the request concerns the legal validity of a statute, rule or order;

10. the request if not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;

11. no clear answer is determinable;

12. the question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime.

13. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

14. the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;

15. a similar request is pending before the Office of the Attorney General, or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;

16. where issuance of a declaratory opinion may adversely affect the interests of the State, the Office of the Attorney General, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

17. where a request for a declaratory opinion involves a question of law, the Office of the Attorney General may refer the matter to the Opinions Division of the Office of Attorney General; or

18. where the question involves eligibility for a license, permit, certificate or other approval by the Office of the Attorney General or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit or certificate or other approval may be determined.

104 <u>Formatting and Submission of the Request for a Declaratory Opinion</u>

1. Each request must be printed, typewritten or in legible handwriting. Each request must be submitted on standard business letter size paper (8 ½" by 11"). Requests may be in the form of a letter addressed to the Office of the Attorney General or in the form of a pleading as might be addressed to a court.

2. All requests must be mailed, delivered or transmitted via facsimile to the Office of the Attorney General. The request and its envelope shall clearly state that it is a

request for a declaratory opinion. Oral, telephone, and email requests are unacceptable.

3. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request complies with the requirements set forth in these rules, including, but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal.

4. A request must be limited to a single transaction or occurrence.

5. Each request must contain the following:

   a. a clear identification of the statute or rule at issue;

   b. the question sought to be answered in the declaratory opinion, stated clearly;

   c. a clear and concise statement of all facts relevant to the question presented;

   d. the identity of all other known persons involved in or impacted by the described factual situation prompting the request, including their relationship to the facts, name, mailing address and telephone number; and

   e. a statement sufficient to show that the person seeking the opinion has a substantial interest in the subject matter.

6. The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the Office of the Attorney General.

7. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The Office of the Attorney General may request that the argument and memorandum of authorities be submitted by any interested party.

105 Office of the Attorney General's Response

1. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Office of the Attorney

General shall, in writing:

a. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;

b. decline to issue a declaratory opinion, stating the reasons for its action; or

c. agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion, by a specified time but not later than ninety (90) days after receipt of the written request.

2. The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the Office of the Attorney General.

3. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Office of the Attorney General may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

106 Procedure After Request for Declaratory Opinion Received

1. The Office of the Attorney General may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

2. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all person, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the Office of the Attorney General within twenty (20) days of the date of this request."

107 Hearings at the Discretion of the Office of the Attorney General

1. If the Office of the Attorney General in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the

Office of the Attorney General may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail seven (7) calendar days prior to the hearing shall be deemed appropriate.

2. The procedure for conduct a hearing, including, but not limited to, the manner of presentation, the time for presentation, and whether and how information may be taken, shall be within the discretion of the Office of the Attorney General.

3. The Office of the Attorney General shall allow the requestor to participate in the hearing. The Office of the Attorney General may allow any other persons or entities to participate in the hearing.

108 Public Availability of Requests and Declaratory Opinions

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours and in accordance with the Mississippi Office of the Attorney General's public records request procedure. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.